***United States Court of Appeals***

***for the Second Circuit***

# APPENDIX

# 76-1272

B

P/S

# United States Court of Appeals

## FOR THE SECOND CIRCUIT

Docket No. 76-1272

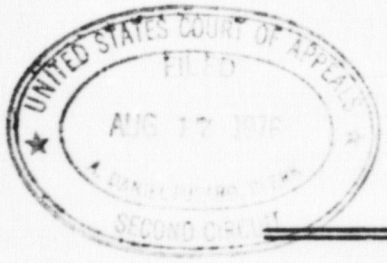
UNITED STATES OF AMERICA,
*Appellee,*

*—against—*

ROBERT P. GIALLANZO,
*Appellant.*

On Appeal From the United States District Court
for the District of Vermont

## DEFENDANT – APPELLANT'S APPENDIX




Stephen G. Murphy,
*Attorney for Appellant*
*125-10 Queens Boulevard*
*Kew Gardens, N.Y. 11415*
*(212) 793-0200*

PAGINATION AS IN ORIGINAL COPY

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JUDGE/MAGISTRATE ☒ Assigned Trial / Disp./Sentence 1006
210 District | 5 Office

• U.S. vs. GIALLANZO, ROBERT P. (defendant)

11 | 12 | 75 | 86 | 1

No. of Defdnts 2 •

| U.S. CODE SECTION | OFFENSES | |
|---|---|---|
| 18:922(a)(3) 2 | Illegally trans. firearms.(1-3) | 3 |
| 18:922(a)(5) 2 | Sold firearms to out-of-stater. (4-6) | 3 |
| 18:922(a)(6), 944 and 2 | Made false receipt in disposition of firearms (7-9) | 3 |
| 18:922(a)(3); 924; 18:371 | Conspired to sell firearms illegally. (10) | 1 |

MAGR. CASE NO.

BAIL • RELEASE
☐ Denied ☐ Personal Recog. ☐ Unsecured Bond ☐ Conditional Release
AMT Set (000) $ ____ date ____ ☐ Bail Not Made ☐ Bail Status Changed (See Docket)
☐ 10% Deposit ☐ Surety Bond ☐ Collateral ☐ 3rd Party Custody ☐ PSA

U.S. Attorney or Asst.: James P. Carroll, Esq., 79 Center St., Rutland, VT

Defense ☐ CJA, ☐ Ret., ☐ Waived, ☐ Self, ☐ None, ☐ Other, ☐ PD, ☐ CD: Stephen Murphy, Esq., 125-10 Queens Blvd., Kew Gardens, Queens, NY 11415

**ARREST** — ____ or U.S. Custody Began on Above Charges; ☐ Prosecution Deferred

**INDICTMENT ☒ Information ☐** — 12/11/75; ☐ High Risk Defn. & Date Design'd; ☐ Waived; ☐ Superseding Indict/Info

**ARRAIGNMENT** — 1st Plea 1-30-76; Final Plea

**TRIAL** — Trial Set For 3-15-76; ☒ Not Guilty ☐ Nolo ☐ Guilty; ☐ Not Guilty ☐ Nolo ☐ Guilty; Voir Dire ☐; Trial Began ☐ J ☐ N; Trial Ended

**SENTENCE** — Disposition; ☐ Convicted ☐ Acquitted ☐ Dismissed ☐ Nolled/Discontinued; ☐ On All Charges ☐ On Lesser* Offense(s) ☐ WOP; ☐ WP*

| | | DATE | INITIAL/No. |
|---|---|---|---|
| Search Warrant | Issued | | |
| | Return | | |
| Summons | Issued | | |
| | Served | | |
| Arrest Warrant | | | |
| COMPLAINT ▶ | | | |
| OFFENSE (In Complaint) | | 6/7/76 #2386 $.00<br>6/11/76 CO. #13 $.00 | |

INITIAL APPEARANCE — INITIAL/No.

PRELIMINARY EXAMINATION OR REMOVAL HEARING — Date Scheduled ____ Date Held ____ ☐ Waived ☐ Not Waived ☐ Intervening Indictment

Tape No. — INITIAL/No.

OUTCOME: ☐ Dismissed ☐ Held for District GJ ☐ Held to Answer to U. S. District Court; BOND ☐ Exonerated ☐ To Transferee District; AT:

Magistrate's Initials ▶

• Show last names and suffix numbers of other defendants on same indictment/information: SORIENTE (2)

| DATE | PROCEEDINGS | V. Excludable Delay (a) (b) (c) (d) |
|---|---|---|
| 1975 Dec. 11 | Filed Indictment. | 1. |
| " " | " Record of Grand Jurors concurring. | |
| 1976 Jan. 9 | Issued Warrant for Arrest of Deft. | |
| " 14 | Filed Government's request for issuance of Warrent of Arrest. | 2. |
| " 20 | Issued Summons returnable 1-30-76 at 1:00 PM at Rutland. | |
| " 28 | Filed warrant for arrest of Defendant. | 3. |
| " 30 | In Court before Judge Holden. John Hughes, for Government Stephen G. Murphy, for Defendant. | |
| " " | Defendant Giallanzo, in court with his attorney, for Arraignment. | |
| " " | Judge Holden inquires from Mr. Murphy his address & places he is admitted to practice. He then informed Mr. Murphy of Local Rule 2, re: instate atty. | |
| " " | Court makes inquires of Defendant. | |
| " " | Defendant waived reading of the indictment, was arraigned and pleaded notguilty to Counts 1 to 10. | |

OPPOSITE THE APPLICABLE DOCKET ENTRIES IN SECTION IV SHOW, IN SECTION V, ANY OCCURRENCE OF EXCLUDABLE DELAY PER 18 USC §3161(h) – "SPEEDY TRIAL ACT".

A-2

| DATE 1976 | IV. PROCEEDINGS (continued) | | V. EXCLUDABLE DELAY (a) | (b) | (c) | (d) |
|---|---|---|---|---|---|---|
| Jan. 30 | Mr. Hughes moved that bail be continued as fixed in the original Indictment in the amount of $5,000. | | | | | |
| " " | Court places a restriction order on deft. as to VT and New York, requires him to notify his counsel on a weekly basis. | | | | | |
| " " | Court states that Mr. Murphy must have instate counsel by 2-2-76. Judge Holden sets 2-13-76 for Pre-Trial Motions. Mr. Murphy arques that he will-be unable to attend Ct.,on that day. Judge Holden states that will not hold up Ct. to accomidate Mr. Murphy. | | | | | |
| " " | ORDERED: Case continued untill February 13, 1976 for Motions. | | | | | |
| " " | Filed Waiver of Defendant's Presence. | 4 | | | | |
| Feb. 3 | Filed Summons returned served. | 5. | | | | |
| " 11 | Filed financial Affidavit. | 6 | | | | |
| " 12 | Filed Summons returned served. | 7 | | | | |
| " "17 | Filed application for an Adjournment. | 8 | | | | |
| " " | Filed Affidavit of Stephen G. Murphy | 9 | | | | |
| " " | Filed Motion for Discovery and Inspection of Defendant. | 10 | 3 | 2-17-76 | E | |
| " " | Filed Defendant's Motion for Bill of Particulars. | 11 | | | | |
| " 27 | " Government's Response to Motions for Discovery and Inspection of Defendant Robert P. Giallanzo. | 12 (a) | | | | |
| " " | " Government's Bill of Particulars. | 13 | | | | |
| " " | " Government's Memorandum of Points and Authorities in Support of the Position of the United States with respect to Defendant Giallanzo's Motion for Bill of Particulars. | 14 | | | | |
| " " | " Government's Certificate of Service. | 15 | | | | |
| " 27 | In Court before Judge Holden. Jerome F. O'Neill Esq. for Government. James P. Carroll for Defendant. | | | | | |
| " " | Hearing on defendant's Motions for Discovery and Inspection and for Bill of Particulars. | | | | | |
| " " | Statements made to the Court by Mr. Carroll, re: Billof Particulars. He also states Gov't has complied with discovery, followed by Mr. O'Neill in regard to Bill of Particular. | | | | | |
| " " | Court makes inquires from Mr. O'Neill as to the specifics of the Bill re: witness and Gov't claim and states that Gov't should comply. | | | | | |
| " " | Court states that case will be no. 1, for trial March 15th.- - request for Bill of Particulars Par.'s 13,17,&18 have been complied with. | | 3 | 2-27-76 | E | 11 |

A-3

MINAL

VIL DOCKET CONTINUATION SHEET

| PLAINTIFF | DEFENDANT | DOCKET NO. 75-86 |
|---|---|---|
| U.S.A. | Giallanzo | PAGE 2 OF ____ PAGES |

| DATE | NR. | PROCEEDINGS |
|---|---|---|
| 1976 | | |
| Mar.11 | | At request of Defendant, trial postponed pending defendant's recovery from illness. Excludable time starts today. 3 3-11-76 N |
| " 12 | 19 | Filed Subpoena to Testify returned unserved. of trial |
| " 19 | 21 | Filed defendant Giallanzo' pplication for adjournment for a period of at lease three weeks. |
| " 25 | 22 | " Subpoena to Testify returned unserved as to George W.Soriente. |
| " 30 | 23 | " Government's Subpoena to Testify returned served as to Steven Duborow. |
| Apr. 7 | 24 | " six Government subpoenas to testify, returned served. 3 4-13-76 3 N |
| " 13 | | Trial by Jury begun before Judge Holden. John Hughes, Jr., Asst. U. S. Attorney and Jerome J. Niedermeier, Asst. U. S. Atty., for Government. Stephen Murphy, Esq. and James P. Carroll, Esq., attorneys for Defendant. |
| " " | 25 | Filed Governments Requests to charge. |
| " " | | At Bench attorneys stipulate to proceed with a 12 member jury, no alternate. Counsel have agreed to proceed with 11 jurors in the event a juror is unable to attend. Stipulation to be put in writing. |
| " " | 26 | Filed Stipulation, should a juror be unable to attend or continue with this trial, that the trial may proceed with a number less than 12. |
| " " | | A Jury was impanelled by the Clerk. |
| " " | | Opening statements made to Jury by Mr. Niedermeier. Mr. Murphy, for Defendant, waived opening statements. |
| " " | | The following witnesses, sworn by Clerk, were examined and testified for the Government: Wayne Edwin Parker, Clarence R. Parker. |
| " 14 | | Trial resumed. |
| " " | | Clarence R. Parker, resumed the stand, and was further examined |
| " " | | The following witnesses, Sworn by the Clerk, were examined for the Government. |
| " " | | At 1:35 p.m. Government rests. |
| " " | | Jury excused from Courtroom. |
| " " | | Mr. Murphy moves for consolidation of Counts 1, 2 and 3 into one count and for consolidation of counts 4, 5 and 6 into one count and for consolidation of counts 7, 8 and 9 into one count. |
| " " | | Mr. Murphy moves for a directed verdict of acquittal. |
| " " | | Decision reserved as to consolidation. |
| " " | | Mr. Murphy requests to re-call Wayne Parker to the stand for further cross-examination. |
| " " | | ORDERED: Motion granted. |
| " " | | Motion for directed verdict is denied. |
| " " | | Wayne Edwin Parker, recalled by the defendant was further examined. |
| " " | | Robert P. Giallanzo, Sworn by Clerk, testified on his own behalf. |
| " " | | At 2:55 p.m. Defendant rests. |
| " " | | In Chambers. |
| " " | | Mr. Murphy renews his motion for consolidation of counts previously stated and also renews his motion for a directed verdict. |
| " " | | Statements made to Court by Mr. Niedermeier re: consolidation. |

A-4

CR. 75-86-1 U.S.A. vs. Giallanzo

CIVIL DOCKET CONTINUATION SHEET

| PLAINTIFF | DEFENDANT | DOCKET NO. ____ PAGE ___ OF ___ PAGES |
|---|---|---|

| DATE | NR. | PROCEEDINGS |
|---|---|---|
| 1976 Apr. 14 | | followed by Mr. Murphy and moves transportation Count be dismissed. |
| " " | | Motion for directed verdict Denied. |
| " " | | Upon the Motion of Mr. Murphy to consolidate Counts 1, 2 and 3 into one Count and to consolidate Counts 4, 5 and 6 into one count, it was so ORDERED: Counts 1, 2 and 3 consolidated. Counts 4, 5 and 6 consolidated. |
| " " | | Motion to consolidate Counts 7, 8 and 9, Denied. |
| " " | 27 | Filed Defendant's Requests to Charge. |
| " 15 | | Trial resumed. |
| " " | | Closing arguments were made to the Jury by Mr. Niedermeier; followe by Mr. Murphy; further followed by Mr. Hughes for Government. |
| " " | | The Crier makes proclamation for strict silence while the Court gives the charge to the Jury. |
| " " | | ORDERED: that Floyd Sumner be appointed Foreman of the Jury. |
| " " | | At 10:45 A.M. the Court commenced its charge to the Jury, concluding at 12:05 P.M., at which time the Jury was taken to dinner, the returned for deliberation of the case. |
| " " | | Christian Hansen, Jr. was sworn by the Clerk as the officer in charge of the Jury. |
| " " | | In Chambers. Counsel and Defendant present. |
| " " | | Court reads note from Jury asking to have charges of indictment read |
| " " | | At 2:15 P.M. the Jury come into Court for further instructions on the indictments. After receiving same, they again retire for further deliberation of the case. |
| " " | | At 4:35 P.M. the Jury come into Court and report: Guilty as to the first consolidated count of the indictment. Not Guilty as to the second consolidated count of indictment. Not Guilty as to Count 7 of the indictment. Not Guilty as to Count 8 of the indictment. Not Guilty as to Count 9 of the indictment. Not Guilty as to Count 10 of the indictment. |
| " " | | Upon Motion of Mr. Murphy to poll the Jury, the Jury was polled. |
| " " | | At 4:45 P.M. the Jury was excused. |
| " " | | It was Ordered by the Court that a presentence investigation report be made; that sentencing be continued until after said report is completed. |
| " " | | Mr. Hughes requests bail be continued as previously set, and it was so, ORDERED. |
| " " | | Necessary appeal papers were given Mr. Murphy in Court. |
| " " | 28 | Filed Government's Subpoena to testify, returned served. |
| " 22 | | Upon oral order, on the record, deft's counsel requested extension of time to file Motion for New Trial under Rule 31 and Motion for Judgment of Acquittal under FRCP 29. |
| " " | | Court granted 7 days additional time or until April 29, 1976. Attys. notified. |
| " " | 29 | Filed Defendant's affidavit in support of motion a judgment of acquittal and a new trial. |
| May 6. | 30 | Filed response of U.S. to Deft.'s Motion for Judgment of acquittal, or in the Alternative, for a New Trial. |

A-5

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U.S. vs Robert P. Giallanzo

75 86 1
Yr. | Docket No. | Def.

| DATE | PROCEEDINGS (continued) (Document No.) | V. EXCLUDABLE DELAY (a) | (b) | (c) | (d) |
|---|---|---|---|---|---|
| 1976 June 4 | In Open Court before Judge Holden. Defendant Giallanzo present in Court with his Attorneys James Carroll, Esq., and Stephen Murphy, Esq. Jerome Niedermiere, Esq. for Government. | | | | |
| " " | Hearing on Defendant's Motion for Judgment of Acquittal and a new trial; and if denied, for sentence. | | | | |
| " " | Statements made to Court by Mr. Murphy in support of deft's Giallanzo's motion: followed by Mr. Niedermiere in opposition to said motion. | | | | |
| " " | Further statements made by Mr. Murphy in support of his motion. | | | | |
| " " | Taken under consideration. | | | | |
| " " | In Court, Deft. and all counsel present, it was | | | | |
| " " | Ordered: Motion for Judgment of acquittal denied and for a new tiral is denied. | | | | |
| " " | Mr. Murphy makes further statements to the Court . | | | | |
| " " | Case to proceed to sentence. Court makes inquiry of Counsel and defendant re: presentence report. | | | | |
| " " | Mr. Murphy makes statements to Court re: mitigation of sentence; followed by Mr. Giallanzo. | | | | |
| " " | Sentence: Court finds the deft. comes under the provisions of the Youth Corrections Act sentence under Section 5006 Title 18, U.S.C. | | | | |
| " " | Defendant sentenced to custody of Attorney General pursuant to Chapter under Youth Corrections Act until discharged by that Division. | | | | |
| " " | Court advises defendant and Counsel of right to appeal. | | | | |
| " " | Mr. Murphy for defendant moves that sentence imposed be stayed pending appeal. | | | | |
| " " | Ordered: Motion granted. | | | | |
| " " | Filed Deft's Notice of Appeal. Mailed copy to attys., Judge Holden, Court Reporter, U. S. Attorney and Clerk, US Court of Appeals for the Second Circuit. | | | | |
| " " | Received $5.00 (from Atty. Stephen Murphy) as filing fee for Notice of Appeal - Receipt #25864. | | | | |
| " " | Filed Judgment and Commitment--Deft. committed to custody of the Atty. Gen for imprisonment pursuant to 18 USC §5010(b), as a Youth Offender for treatment and supervision until discharged by the Youth Correction Division of the Parole Commission. | | | | |
| " 18 | " Scheduling Order -- Counsel Murphy is ordered to furnish copy of transcript by 7-9-76; appeal to be docketed and record filed on or before 7-9-76. | | | | |

(over)

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

| DATE | PROCEEDINGS (continued) (Document No.) | V. EXCLUDABLE DELA (a) | (b) | (c) | (d) |
|---|---|---|---|---|---|
| 35 June 24 | Filed Transcript of trial, 13-15 April 1976. | | | | |
| 36 " " | " Transcript of post trial hearing on Defendant's Motion for Judgment of Acquittal, and of sentencing on 4 June 1976. | | | | |
| July 26 | Mailed record on appeal to Clerk, U. S. Court of Appeals for the Second Circuit, N.Y., N.Y. Attys. notified. | | | | |

AO 257

Interval | Start Date | Ltr. | Total

A-7

Filed December 11, 1975 at 1:30 P.M.
Leonard W. Lafayette
Chief Deputy Clerk

UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

| | |
|---|---|
| UNITED STATES OF AMERICA<br><br>v.<br><br>ROBERT P. GIALLANZO<br>GEORGE W. SORIENTE | CRIMINAL NO. 75-86<br><br>Title 18<br>United States Code<br>§§ 2, 371, 922 |

COUNTS 1 - 3

The Grand Jury charges:

On or about September 20, 1975, ROBERT P. GIALLANZO and GEORGE W. SORIENTE, the defendants, unlawfully, willfully and knowingly did transport the firearms listed below into the State of New York, where each resided, from the District of Vermont, where the firearms were purchased and otherwise obtained by the defendants, ROBERT P. GIALLANZO and GEORGE W. SORIENTE; in violation of Title 18, United States Code, §§ 922(a)(3) and 2.

| COUNT | FIREARM |
|---|---|
| 1 | .22 Magnum caliber Hi-standard derringer, Serial No. 2449640 |
| 2 | .38 special caliber Colt Cobra revolver, Serial No. F81586 |
| 3 | .38 caliber Iver-Johnson revolver, Serial No. G41117 |

COUNTS 4 - 6

The Grand Jury further charges:

On or about September 20, 1975, in the District of Vermont, Clarence R. Parker did transfer, sell, trade, give, and deliver the firearms listed below to ROBERT P. GIALLANZO and GEORGE W. SORIENTE, the defendants, who the said Clarence R. Parker knew and had reasonable cause to believe resided in the State of New York, a state other than that in which Clarence R. Parker resided at the time of the aforesaid transfer, sale, trade, gift, and delivery.

On or about September 20, 1975, in the District of Vermont, ROBERT P. GIALLANZO and GEORGE W. SORIENTE, the defendants, unlawfully, willfully and knowingly did aid, abet, counsel, command, induce, procure and cause Clarence R. Parker to commit the above offenses against the United States; in violation of Title 18, United States Code, §§ 922(a)(5) and 2.

| COUNT | FIREARM |
|---|---|
| 4 | .22 Magnum caliber Hi-standard derringer, Serial No. 2449640 |
| 5 | .38 special caliber Colt Cobra revolver, Serial No. F81586 |
| 6 | .38 caliber Iver-Johnson revolver, Serial No. C41117 |

A-9

COUNTS 7 - 9

The Grand Jury further charges:

On or about September 20, 1975, in the District of Vermont, Clarence R. Parker, in connection with the acquisition and attempted acquisition of the firearms listed below from the licensed dealers set forth below, unlawfully, willfully and knowingly did make false and fictitious oral and written statements intended and likely to deceive said dealers with respect to a fact material to the lawfulness of the sale and disposition of said firearms under the provisions of Chapter 44 of Title 18, United States Code, to wit, the name of the transferee of the firearms.

On or about September 20, 1975, in the District of Vermont, ROBERT P. GIALLANZO and GEORGE W. SORIENTE, the defendants, unlawfully, willfully and knowingly did aid, abet, counsel, command, induce, procure and cause Clarence R. Parker to commit the above offenses against the United States; in violation of Title 18, United States Code, §§ 922(a)(6), 924 and 2.

| COUNT | FIREARM | LICENSED DEALER |
|---|---|---|
| 7 | .22 Magnum caliber Hi-standard derringer, Serila No. 2449640 | Clapp's Sporting Goods |
| 8 | .38 special caliber Colt Cobra revolver, Serial No. F81586 | Clapp's Sporting Goods |
| 9 | .38 caliber Iver-Johnson revolver, Serial No. G41117 | J. Galanes & Sons |

COUNT 10

The Grand Jury further charges:

From on or about the 1st day of June, 1975 and continually thereafter, up to and including the date of this indictment, in the District of Vermont, and elsewhere, ROBERT P. GIALLANZO and GEORGE W. SORIENTE, the defendants, and Clarence R. Parker and Wayne E. Parker, named herein as co-conspirators, willfully and knowingly did combine, conspire, confederate and agree together with each other and with other persons to the Grand Jury unknown to commit offenses against the United States, to wit, to violate §§2, 922 and 924 of Title 18 of the United States Code.

It was a part of the conspiracy that the defendants and co-conspirators would:

1. Unlawfully, willfully and knowingly in connection with the acquisition and attempted acquisition of firearms from licensed dealers, make false and fictitious oral and written statements intended and likely to deceive said dealers with respect to facts material to the lawfulness of the sale and disposition of said firearms under the provisions of Chapter 44 of Title 18, United States Code; in violation of Title 18, United States Code, §922(a)(6), 924(a) and 2.

2. Unlawfully, willfully and knowingly transport into the State of New York, where the defendants resided, firearms purchased and otherwise obtained by the defendants outside that State; in violation of Title 18, United States Code, §§922(a)(3) and 924.

3. Unlawfully, willfully and knowingly transfer, sell, trade, give and deliver firearms to persons whom the defendants and co-conspirators knew and had reasonable cause to believe resided in a state other than that in wich the person making the trasnfer, sale, trade, gift, delivery resided at the time of the transfer, sale, trade, gift, and delivery.

A-12

OVERT ACTS

In furtherance of the conspiracy and the effect the objects thereof, the following overt acts were committed in the District of Vermont and elsewhere:

1. On September 20, 1975, ROBERT P. GIALLANZO and GEORGE W. SORIENTE travelled to Brattleboro, Vermont.

2. On September 20, 1975, ROBERT P. GIALLANZO, GEORGE W. SORIENTE, Clarence R. Parker, and Wayne E. Parker met together in Brattleboro, Vermont.

3. On September 20, 1975, Clarence R. Parker entered Clapp's Sporting Goods store, 153 Main Street, Brattleboro, Vermont.

4. On September 20, 1975, Clarence R. Parker entered J. Galanos & Sons store, 116 Main Street, Brattleboro, Vermont.

(All in violation of 18 U.S.C. §371)

A TRUE BILL

Foreman

GEORGE W. F. COOK
United States Attorney

By Jerome F. O'Neil
JEROME F. O'NEILL
Assistant U. S. Attorney

DECEMBER 11, 1975
RUTLAND, VT.

A-13



UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF VERMONT

| | |
|---|---|
| The United States of America | |
| vs | Criminal Action #75-86 |
| ROBERT P. GIALLANZO | |

Tried before The Honorable JAMES S. HOLDEN, Chief, U.S. District Judge and a Jury, at Rutland, Vermont, 13, 14, 15 April 1976

Appearances:

The Hon. JOHN HUGHES and
The Hon. JEROME NEIDERMEIER
Assistant United States Attorneys

STEPHEN G. MURPHY, Esquire
Suite 3A, Silver Towers Apartments
125-10 Queens Boulevard
Kew Gardens, N.Y. 11415
ATTORNEY FOR THE DEFENDANT.

JAMES P. CARROLL, Esquire
Vermont Counsel for the Defendant.

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THE COURT: Good morning, ladies and gentlemen. You may call the case.

DEPUTY CLERK LAVICTORIE: Your Honor, the case before the Court at this time is Criminal Number 75-86-1, The United States of America versus Robert P. Giallanzo. Attorneys for the Government are JOHN HUGHES, JUNIOR and JEROME J. NEIDERMEIER, Assistant United States Attorneys.

Attorney for the defendant are STEPHEN G. MURPHY and JAMES P. CARROLL and we are here to draw a Jury.

THE COURT: It appears that the Defendant is in Court with counsel.

MR. MURPHY: That's correct, Your Honor.

THE COURT: Is the Government ready to proceed?

MR. HUGHES: It is, Your Honor.

THE COURT: And the defendant?

MR. MURPHY: Yes, Your Honor.

THE COURT: Will counsel please approach the Bench?

(Off-the-record conference at the Bench ensued)

THE COURT: Mr. Clerk will you call the roll of the Veniremen.

DEPUTY LAVICTORIE: What?

THE COURT: Call the roll of the jurors.

DEPUTY LAVICTORIE: Please answer to your names in the call of the roll.

(At this point, roll of the jurors was called by the Deputy Clerk)

THE COURT: You will administer the oath to the entire panel, Mr. Clerk.

DEPUTY CLERK LAVICTORIE: Would you please stand and raise your right hands, please? Do you solemnly swear that without respect to persons or favor of any man, you will -

(At this point, the Clerk was interrupted by the Judge)

DEPUTY CLERK LAVICTORIE: Do you solemnly swear that the evidence you shall give relative to your qualifications as a juror in the cause now under consideration, shall be the whole truth and nothing but the truth, so help you God?

JURORS: I do.

THE COURT: You may be seated. You may proceed to empanel the Jury.

DEPUTY CLERK LAVICTORIE: Ladies and Gentlemen, please answer to your names when called and take your seat in the jury box.

(The following prospective jurors were called and seated as follows):

| | | |
|---|---|---|
| 1. | HUBBARD, Mrs. Barbara J., | RUTLAND, VERMONT |
| 2. | WEST, Jerry | ROCHESTER, VERMONT |
| 3. | WEBER, Edward F., | WEST RUTLAND, VERMONT |
| 4. | KING, Mrs. Joan | MANCHESTER, VERMONT |
| 5. | BEAUCHAMP, Mrs. Barbara J., | RUTLAND, VERMONT |
| 6. | MONROE, Mrs. Frances | BRANDON, VERMONT |
| 7. | FABIAN, John, | WEST RUTLAND, VERMONT |
| 8. | FOX, Mrs. Jill | LONDONDERRY, VERMONT |
| 9. | AHONEN, Mrs. Freda H., | LUDLOW, VERMONT |
| 10. | COLEMAN, Mrs. Esther V., | WALLINGFORD, VERMONT |
| 11. | SHAW, Mrs. Mary L., | PITTSFORD, VERMONT |
| 12. | BRIGGS, Mrs. Betty A., | LUDLOW, VERMONT |

THE COURT: The Court again as is the custom, will call upon each of the jurors who are in the court room to

listen to the statements that are made concerning the case by the Court and the questions that are asked by counsel for the Government and counsel for the defendant so that if you should subsequently be called to take a place in the jury box, you will have in mind the questions that are significant and important in the selection of the Jury in this case.

This is a criminal case entitled, THE UNITED STATES OF AMERICA against ROBERT F. GIALLANZO and it comes to Court by way of an indictment in which it is charged that the Defendant, on September 20th, 1975, did unlawfully transport fire arms obtained in Vermont to the State of New York where this defendant resided and the defendant unlawfully induced one, charged in the indictment further charged, that the defendant did unlawfully induce Clarence R. PARKER, to sell and deliver arms to them and they unlawfully induced Mr. PARKER to make false statements to licensed gun dealers in order to acquire fire arms.

There is a further count in the indictment which charges that the defendant conspired with one George SORIENTI, Charles PARKER and Wayne PARKER, to unlawfully make false statements to licensed gun dealers in order to obtain fire arms and unlawfully transport such fire arms into New York State from a place where they were obtained outside that State and that they did unlawfully sell and conspire to sell and deliver fire arms to persons known to reside in the State of, in a state other than the State of VERMONT and in other than the State where the person who made the transfer, resided.

It is also alleged that the defendant, ROBERT P. GIALLANZO and other alleged co-conspirators, undertook certain specific actions in furtherance of the alleged conspiracy.

I will later during the course of the trial, instruct you more fully concerning the contents of the indictment that is presented, - has been presented against this defendant but this is merely to acquaint you with the nature of the case that is brought before you.

Now, the defendant has pleaded "not guilty" to each and all of the charges that have been asserted against him and he therefore, raises certain issues of fact for the Jury to determine.

Now, I have referrred to the indictment which was returned by the Grand Jury. You should understand that an indictment is a formal document which the Government uses to commence a charge against a particular defendant and upon which it brings the case into court.

The indictment serves no other trial purpose, whatsoever. Again, the sole purpose of an indictment is to serve as an accusation or charge, which the United States makes against the defendant. It does serve to inform the defendant of the crime of the, or the alleged offense with which he is charged.

Now, bear in mind that the indictment is not evidence against the accused and affords no inference of guilt. The Government has the burden of proof to establish the guilt of every person who is brought into court on an indictment, to

establish that person's guilt beyond a reasonable doubt.

Now, during, - in order to select the jury in this case, some of you, I don't believe, have been called upn to sit on a trial of any case during this term for one reason or another, but the Court will conduct the initial voir dire, what we call the voir dire and the purpose of that is to determine your background and your residence and whether or not you should be selected in this to sit as a juror in this particular case.

After the voir dire is conducted by the Court and supplemented by counsel for the Government and counsel for the defendant, the parties will be allowed to exercise certain challenges which the law provides and that means that a particular juror is excused and there is no reason to the party who wants to excuse a particular juror, does not have to state any reason for his excusing that particular juror.

Now, you should bear, - not feel there is any, - have any adverse reaction to the fact that one or more of the parties may excuse you as a juror. It, this is simply the method which the law provides for making certain that a person accused of a crime or a criminal offense against the United States and the Government itself, has the right to have the case tried by persons who are acceptable to them as jurors and which no, there exists no valid cause to excuse them. They can excuse them without assigning any valid cause. Any particular reason.

Mrs. HUBBARD, I believe your full name is BARBARA HUBBARD?

MRS. HUBBARD: Yes.

THE COURT: You reside in Rutland?

MRS. HUBBARD: Right.

THE COURT: In the City of Rutland?

MRS. HUBBARD: (Nodded head)

THE COURT: How long have you resided here?

MRS. HUBBARD: I was born here and for a short period I lived in New Hampshire but I have lived here about thirty years, this past - -

THE COURT: Are you presently employed?

MRS. HUBBARD: Yes.

THE COURT: And who is your employer?

MRS. HUBBARD: Leonard Clark at Dunkin Donuts.

THECOURT: And that is the Dunkin Donut franchise on Route 7?

MRS. HUBBARD: Uh huh.

THE COURT: And how long have you been employed?

MRS. HUBBARD: Approximately nine years.

THE COURT: Nine y ars?

MRS. HUBBARD: (Nodded head)

THE COURT: What was your employment prior to that time?

MRS. HUBBARD: Just a housewife.

THE COURT: Well, that is a very important occupation, I think. Are you presently married?

MRS. HUBBARD: Yes.

THE COURT: And your husband is employed?

VOIR DIRE EXAMINATION OF MRS. HUBBARD BY THE COURT, CONTINUED:

A. Yes.

Q. And will you tell us where his employment is?

A. He is assistant manager of the Rutland News.

Q. AND IS THAT A NEWSPAPER DISTRIBUTING AGENCY?

A. Yes.

Q. And how long has he been employed in that capacity?

A. Probably around thirty years.

Q. Are there any other persons residing in your household who are presently employed?

A. No.

THE COURT: Perhaps before I proceed further, it would be well to have counsel for the Government identify themselves preliminary to asking the jurors whether they are acquainted with any members, also the other members in the United States Attorney's office, please, Mr. Hughes?

MR. HUGHES: My name is JOHN HUGHES, JUNIOR. I am an assistant U.S. Attorney. This is JEROME NEIDERMEIER, an assistant U.S. Attorney. We will both be handling this case. There are other members of our office, one whose name is JILL JACOBSON who just joined us. Another is JEROME F. O'NEILL who lives in Rutland and the U.S. Attorney is Mr. COOK of Rutland.

MR. CARROLL: My name is JAMES CARROLL and I am a partner in the law firm of SMITH, HANSEN, CARROLL and GEORGE. My partners are JOHN HANSEN, ALAN GEORGE, RICHARD HILL, CARL ANDERSON and we have an associate with us by the name of ROBERT PRATT and we practice at 79 Center Street in Rutland.

THE COURT: And, Mr. Murphy?

MR. MURPHY: My name is Stephen MURPHY. I am an attorney practicing in Long Island, New York. Thank you.

THE COURT: And the defendant I believe, is Mr. ROBERT GIALLANZO, who is sitting beside you?

MR. MURPHY: Yes, that is correct, Your Honor.

VOIR DIRE EXAMINATION OF JUROR WEST BY THE COURT:

Q. Mr. WEST, where is your home?

A. Rochester.

Q. How long have you lived there?

A. About eight years.

Q. And are you presently employed?

A. Yes, I am. I am a teacher at Rochester High School.

Q. Rochester High School?

A. (Nodded head)

Q. How far in distance is that from Rutland?

A. About 35 miles I would say.

Q. How long have you been employed by the Rochester School District?

A. About eight years.

Q. And before that, what was your work?

A. A student at JOHNSON STATE College.

Q. And are you married, Mr. WEST?

A. Yes, I am.

Q. And is Mrs. WEST employed?

A. No, she isn't.

Q. Has she been within the last few years?

A. No.

Q. Are there any other persons in your household that are employed?

A. No, sir.

VOIR DIRE OF JUROR WEBER BY THE COURT:

Q. Mr. Weber, you live in West Rutland?

A. Yes, sir.

Q. And how long have you lived there?

A. 37 years, sir.

Q. Are you presently employed?

A. Yes.

Q. Will you tell us the nature of your employment?

A. Body man at Potter's Garage in West Rutland.

Q. And how long have you been employed as a repairman?

A. About 7 months.

Q. What was your work before then?

A. Fair Haven Mobile Homes in Fair Haven, Vermont.

Q. Is that a sales agency, or, -

A. Well, it's a, yah, yes, sir.

Q. And are there any other persons living in your household that are employed?

A. Yes, my wife.

Q. What is Mrs. Weber's work?

A. She is a payroll clerk at General Electric.

Q. And is that the General Electric plant here in Rutland?

A. Yes, sir.

VOIR DIRE EXAMINATION OF JUROR KING BY THE COURT:

Q. Mrs. KING, will you tell us of your residence?
A. Manchester, Vermont.
Q. And how long have you lived in Manchester?
A. 45 years.
Q. And are you presently employed?
A. Not presently.
Q. What was your last employment?
A. Well I have been a stand-by sales clerk at the Town and Country Fashion Store in Manchester.
Q. That is a retail establishment?
A. Yes.
Q. Are you married, Mrs. King?
A. Yes, I am.
Q. At the present time? And is Mr. KING employed?
A. Yes he is, he is a carpenter.
Q. And is he self-employed, or does he work for someone?
A. He works for JIM "STROFLI" in Arlington.
Q. How long has he been working for Mr. STOFOLINO?
A. Oh, approximately 2 or 3 years.
Q. And was, before that, was he employed in the Manchester area?
A. Yes, he's been a carpenter for the last 15, 16 years.
Q. Self-employed or working for others?
A. Working for others.
Q. Are there any other persons in your home that are presently employed?
A. My oldest son is working for Aubuchon in Manchester.

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Q. Thank you.

VOIR DIRE EXAMINATION OF JUROR MONROE BY THE COURT:

Q. Mrs. Monroe, -

A. Yes.

Q. Will you tell us of your residence?

A. Leicester.

Q. Your post office address, I believe, is Brandon?

A. r.d. 2, Brandon, correct.

Q. How long have you lived in Leicester?

A. 15 years.

Q. And are there any other persons in your household that are presently employed?

A. Yes. My husband is self-employed as a farmer.

Q. Self-employed?

A. Farmer.

Q. And has he been engaged in that occupation for some time?

A. Around 15 years.

Q. No other persons living in your household that are employed in this area?

A. No.

VOIR DIRE EXAMINATION OF JUROR FABIAN BY THE COURT:

Q. Mr. FABIAN, I believe you reside in West Rutland?

A. 38 years.

Q. And what is your work?

A. I am retired now.

Q. And what was your work prior to retirement?

A. Heavy equipment operator.

Q. And can you tell us who your employer was?

A. Well, my last employer was SMITH & GRESSLER down in D.C. The one before that was F.A. TUCKER from Rutland.

Q. You have been engaged as a heavy equipment operator prior to your retirement for a considerable time?

A. Off and on.

Q. And are there any other persons in your home or your household that are employed?

A. My wife.

Q. And what is Mrs. Fabian's work?

A. She worked for Lend and Lease down in Rutland.

Q. I didn't get the name.

A. I think it is Lend and Lease.

Q. Oh, I see and then are there any others, any children, or -

A. No.

VOIR DIRE EXAMINATION OF JUROR FOX BY THE COURT:

Q. Mrs. FOX, I believe you reside in Londonderry?

A. Yes.

Q. How long have you lived there?

A. A year.

Q. And where was your home before coming to Londonderry?

A. Peru, Vermont.

Q. Right next door?

A. Next door.

Q. And have you lived in Vermont for some time?

A. Nine years.

Q. Where did you, what location did you come from to Vermont?

A. New York City.
Q. New York City? Are you presently employed?
A. No, I am not.
Q. What has been your employment in the past?
A. I ran an art gallery.
Q. In New York City?
A. In Connecticut.
Q. And what town?
A. Stonington.
Q. And did you have some employment in New York City?
A. No, I didn't.
Q. How long were you engaged in the operation of the art gallery?
A. About 3 years.
Q. And I take it - what do you regard as your present empoyment or principle profession?
A. I am assistant editor on a literary magazine and I paint.
Q. Can you tell us the name of the publication?
A. It is called the Paris Review.
Q. Thank you, Mrs. FOX. Are there any, - are you presently married?
A. No, I am divorced.
Q. Are there any persons residing in your home that are employed at the present time?
A. No.

VOIR DIRE EXAMINATION OF JUROR AHONEN BY THE COURT:

Q. Mrs. Ahonen, is that the way you pronounce it?

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A. Yes.

Q. How do you pronounce your first name?

A. Freda.

Q. Freda Ohonen

A. Ahonen, with an A.

Q. I believe you have been summoned from the Town of Ludlow?

A. Right.

Q. How long have you lived in Ludlow?

A. 43 years.

Q. Are you presently employed?

A. No, I am not.

Q. What was your last employment?

A. I was a cashier at the IGA Store, for approximately 22 years ago.

Q. In Ludlow?

A. Yes.

Q. And are you presently married?

A. Yes.

Q. And is Mr. Ahonen employed?

A. He is a supervisor at Fellows Corporation in Springfield.

Q. Fellows Corporation in Springfield, Vermont?

A. Yes.

Q. And that is a machine tool industry?

A. Yes.

Q. - Establishment? How long has he worked for Fellows Gear Shapers?

A. About 24 years.

Q. Are there any other persons in your household that are employed?

A. My oldest sone is employed at Manchester Fibers and it's a woolen mill.

Q. And where is that located?

A. Right in Ludlow.

Q. Thank you, Mrs. Ahonen.

VOIR DIRE EXAMINATION OF JUROR COLEMAN BY THE COURT:

Q. Mrs. Coleman, I believe you reside in Wallingford?

A. Uh huh.

Q. How long have you lived there?

A. 16 years.

Q. Where was your home before coming to Wallingford?

A. Rutland.

Q. Are you presently employed?

A. No.

Q. What was your last employment?

A. I worked at Rutland News in Rutland.

Q. Rutland?

A. Before I got married. Rutland News.

Q. And are you presently married?

A. Uh huh.

Q. And is Mr. COLEMAN employed?

A. He is a supervisor at G.E. in Rutland.

Q. And are there any other persons in your home that are employed at the present time?

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A. No.

Q. Thank you.

VOIR DIRE EXAMINATION BY JUROR SHAW BY THE COURT:

Q. Mrs. SHAW, you live in Pittsford?

A. Right.

Q. And how long have you lived there?

A. Approximately eight years.

Q. And are you employed at the present time?

A. Yes.

Q. And what is the nature of your work?

A. I am a bookkeeper for the Otter Valley Garage.

Q. That is located in Pittsford?

A. Right.

Q. How about Mr. SHAW?

A. He also works there at the Otter Valley Garage.

Q. And how long have you been and your husband, been employed by that garage?

A. My husband has been there about 7 years and I have been there about five.

Q. Thank you.

VOIR DIRE EXAMINATION OF JUROR BRIGGS BY THE COURT.

Q. Mrs. BRIGGS, you live in Ludlow?

A. Correct.

Q. And how long have you lived in Ludlow?

A. 34 years.

Q. Are you employed at the present time?

A. No.

JUROR SHAW: He lives about two houses up from me in Pittsford.

THE COURT: And how long have you known Mr. GEORGE since he moved in that neighborhood?

JUROR SHAW: I don't really know him personally but I know who he is because he does live a couple of houses away.

THE COURT: You don't have any acquaintance visiting at his home, or, -

JUROR SHAW: No.

THE COURT: Either Mr. George or any member of his family ever visit at your home?

JUROR SHAW: No.

THE COURT: I take it that he has never acted for you in any legal proceeding?

JUROR SHAW: No.

THE COURT: Has any lawyer in the U.S. Attorney's office that have been identified here or counsel in Mr. Carroll's firm, or, who have been indicated, acted as attorney for you or for any member of your immediate family?

(No response).

THE COURT: Or ever acted for a close friend of yours as far as you know?

JUROR HUBBARD: (Raised hand)

THE COURT: Yes.

JUROR HUBBARD: One. Mr. CARROLL was a classmate of my daughter's many years ago.

THE COURT: At Rutland?

JUROR HUBBARD: Rutland High School.

THE COURT: Have you known Mr. CARROLL for that length of time?

JUROR HUBBARD: I probably haven't seen him only a couple of times since that. That was a long time ago, too.

THE COURT: Is there anything about that fact that Mr. CARROLL was a classmate of your daughter's that would in any way, influence your judgment in this case?

JUROR HUBBARD: Not a bit.

THE COURT: If you are accepted as a juror. Are there any other members, - I should point out

MR. WEST: I should point out I believe that my ex-wife works in the U.S. Attorney's office as a secretary.

THE COURT: What is her name?

JUROR WEST: Sandra MANDOR.

THE COURT: Would that fact in any way impair your judgment or influence you one way or the other?

JUROR WEST: No, sir.

THE COURT: That relationship?

JUROR WEST: (Nodded head)

THE COURT: How long have you been divorced?

JUROR WEST: Three years.

THE COURT: Are you acquainted with Mr. COOK?

JUROR WEST: Only by name, I have never met him.

THE COURT: And I take it you are not acquainted with the other members in the U.S. Attorney's office?

JUROR WEST: No.

THE COURT: Are there any other members of the jury who have any, who know or have any friends, close friends or relatives who have ever engaged any of the attorneys that are involved in either side of the present proceeding?

(No response).

THE COURT: Have you or any members of the panel ever served as a juror in a criminal or a civil case, or as members of the Grand Jury in either Federal or State courts?

(No response).

THE COURT: Have any of you - -

JUROR FABIAN: Grand Jury.

THE COURT: And was that in this -

JUROR FABIAN: County Court.

THE COURT: County Court. How many years ago?

JUROR FABIAN: Oh, four, I think.

JUROR SHAW: I was on a civil case here last month in this court.

THE COURT: Yes, the Court recalls that and the same is true with you, Mrs. KING and also Mrs. BEAUCHAMP. Any others?

(No response).

THE COURT: Have you or any members of your family ever been the victims of a crime or participated in any criminal case as a complainant or as a witness for the Government or in any other capacity?

(No response).

THE COURT: Insofar as you know?

(No response)

THE COURT: Either you or any member of your immediate family ever been the victims of a crime or participated in any criminal proceeding as a complainant or a witness for the Government or a witness for the defendants or in any other capacity?

JUROR FOX: I have a son that was brought to Court for possession of marijuana.

THE COURT: And how long ago was that?

JUROR FOX: That was in Manchester and that was three years ago Maybe two.

THE COURT: Would the fact that of those proceedings, - - how old was he at that time?

JUROR FOX: He was 17.

THE COURT: Would that fact in any way, effect your judgment or incline you either in favor of the defendant, or against the defendant or in favor of the Government or -

JUROR FOX: I don't believe so.

THE COURT: You could be entirely fair-minded about an entirely different proceeding?

JUROR FOX: Yes.

JUROR AHONEN: I had a nephew that was taken to Court on a similar charge of marijuana.

THE COURT: How long ago was that?

JUROR AHONEN: Five years.

THE COURT: I take it you didn't participate as a witness or in any other capacity?

JUROR AHONEN: No, I don't really know all the details because I wasn't involved.

THE COURT: Where was that proceeding conducted?

JUROR AHONEN: I am not sure whether it was in White River or, - because -

THE COURT: It wasn't in this immediate area, it wasn't in Rutland?

JUROR AHONEN: No.

THE COURT: And I take it that none of the attorneys who were, who are presently involved here in this proceeding were in any way connected, as far as you know?

JUROR AHONEN: (Nodded head)

THE COURT: Are there any others?

(No response)

THE COURT: Are there any jurors who had experiences in any connection, or members of their family?

(No response)

THE COURT: In any criminal case as a complainant or as a witness for the defense or in any way - -

(No response)

THE COURT: Do any of you know anything about the facts of this particular case?

(No response)

THE COURT: I believe according to the indictment the time was in September 1975 and I believe the alleged offense occurred in the vicinity or some of the offenses, occurred in the vicinity of BRATTLEBORO.

(No response)

THE COURT: There is no other town in Vermont involved, is there?

MR. HUGHES: None, Your Honor.

THE COURT: Has any one ever discussed this case with you, or, have you ever heard the case discussed in any manner?

(No response)

THE COURT: Do you or any members of your immediate family or close personal friends, served, presently or in the past, as law enforcement officers?

JUROR WEST: My brother is a police detective in Barre, Vermont.

THE COURT: For the Barre City Police Department?

JUROR WEST: Yes.

THE COURT: How long has he been so engaged?

JUROR WEST: I would say about ten years.

THE COURT: And he is a, in the investigation division, he is not a uniformed officer?

JUROR WEST: Well I think that department, both.

THE COURT: I see, would the fact that your brother has been engaged in law enforcement work in any way incline you either in favor or against the Government or in favor or against the accused in this case?

JUROR WEST: No, sir.

THE COURT: Are there any other members of the jury who have either served yourselves or have close relatives or friends that act and serve as a member of any enforcement

agency either for the State or the Federal government?

(No response)

THE COURT: Haveyou or any of you, ever been an official or employee of the United States, that is a Federal employee?

JUROR MONROE: I worked for the Extension Service and also for the office of the Economic Opportunity.

THE COURT: And the Extension Service is a part of the University of Vermont?

JUROR MONROE: I worked in Massachusetts.

THE COURT: I see.

JUROR MONROE: As a 4-H Youth Agent.

THE COURT: And they are affiliated with the Department of Agriculture?

JUROR MONROE: Yes.

THE COURT: Would that fact in any way incline you in favor of the Government or against the accused or vica versa either in favor of the accused or opposed to the Government?

JUROR MONROE: No.

THE COURT: ARe there any other of the jurors who have been employed by the United States or have any close relatives that are so employed?

(No response)

THE COURT: Do you or any members of your immediate family have any present dealings or have you in the past, with the United States Government or any of its agencies?

JUROR FOX: My brother is a Treasury AGent in

Washington.

THE COURT: Your daughter?

JUROR FOX: My brother.

THE COURT: Oh, your brother, he works for the Treasury Department?

JUROR FOX: Uh huh.

THE COURT: And how long has your brother worked for the Treasury Department?

JUROR FOX: 15-20 years.

THE COURT: Has he always been located in -

JUROR FOX: He has always been involved in the Government but -

THE COURT: Has he always been located in Washington?

JUROR FOX: No, he was in California before then.

THE COURT: Have youever discussed any of his work in that connection?

JUROR FOX: I don't have any idea what he does.

THE COURT: You don't have any idea what the nature of his work is?

JUROR FOX: No.

THE COURT: And I take it you have never discussed any of his activities?

JUROR FOX: No.

THE COURT: Would the fact that your brother has been employed by the TreasuryDepartment incline you one way or the other?

JUROR FOX: No.

THE COURT: There may be witnesses from the Treasury Department I assume in this case. Would the fact that a witness from the Treasury Department or some other representative of the Government might testify would incline you to give them more credence of testimony than that of other witnesses?

JUROR FOX: I don't think so.

JUROR FABIAN: My daughter is a secretary for the White House.

THE COURT: At the present time?

JUROR FABIAN: (Nodded)

THE COURT: How long has she been employed there?

JUROR FABIAN: Oh, two years.

THE COURT: Would that have any bearing on your ability to try this case with fairness to the Government as well as t- the defendant?

JUROR FABIAN: No.

THE COURT: What is the nature of your daughter's work? She is on the secretarial staff?

JUROR FABIAN: Uh huh.

THE COURT: Thank you. Mrs. FOX?

MRS. FOX: I have various relatives during the last war, the second World War that were with the Government. The Bureau of Economic Warfare, Secret Service, I guess that is it.

THE COURT: That was temporary employment ?

MRS. FOX: That was yes, during the war.

THE COURT: Not career?

MRS. FOX: Not now.

THE COURT: Would the fact that you have various relatives employed in different capacities during that period, in any way effect your ability to try this case according to the evidence?

JUROR FOX: No.

THE COURT: Do any of you, yes, I'm sorry.

JUROR HUBBARD: Yes, I'm sorry, I have a son in the U.S. Navy, does this make - -

THE COURT: How long have they been in the service, naval service?

JUROR HUBBARD: I had two sons in the, that are career men that have been in almost 20 years. They are commanders.

THE COURT: Well, I'll ask you if that would, Mrs. HUBBARD, if that would in any way influence your judgment in this case?

JUROR HUBBARD: No.

THE COURT: Do you, yourselves, or any members of your family, have any dealings with the United States Government or any of its agencies, I believe I asked you that but I don't believe I got all of it.

(No response)

THE COURT: Do you have or have you ever had or do you now have or anticipate having any case or dispute or claim against the United States Government, or against the defendant, for that matter?

(No response)

THE COURT: If you are selected to sit on this case, will you be unwilling or unable to render a verdict solely on the evidence presented at the trial and the laws as you are instructed by the Court, disregarding any other ideas, notions or beliefs that you may have encountered in reaching your verdict?

(No response).

THE COURT: Do any of you think of any matter that you should call to the Court's attention which might have some bearing on your qualifications as a juror or which might prevent you from rendering averdict that is fair and impartial as to both parties to this proceeding?

(No response).

THE COURT: Counsel may inquire. I will ask you not to inquire over the questions that I have discussed but if you have any new matter or identification of any witnesses that you may wish to make known, you may do so.

MR. HUGHES: Yes, Your Honor, I have also a few things that you have covered but not directly. I was wondering if any of you know by reputation the law firm of Mr. CARROLL belongs to. I know that you have stated that you don't know him particularly, one of you know of Alan GEORGE. Do any of you know the law firm by reputation? In general?

(No response).

MR. HUGHES: I take it by your silence that no one does. Have any of you been gun dealers, Federally licensed gun dealers, in the past?

(No response).

MR. HUGHES: Do any of you know any licensed gun dealers personally?

(No response)

MR. HUGHS: Any of you been owners or do any of you own guns or hand guns?

(No response)

MR. HUGHES: Now, if you will bear with me here, I take it just about everybody on the panel has - let's narrow this down to handguns. Who owns a hand gun?

JUROR COLEMAN: My husband does.

MR. HUGHES: Do any of you have strong feelings about the right to own a handgun? Do any of you feel that you have strong feelings about it?

(No response)

MR. HUGHES: Anybody have feelings the other way on it about possession of fire arms? Does it bother you, the possession of fire arms, any of you have any strong feelings on that?

(No response)

MR.HUGHES: In this case the Government will be calling certain witnesses and I would like to tell you their names and tell you their addresses and I would like for you to indicate to me if you know any of these people. The Government will be calling one WAYNE PARKER of BRATTLEBORO, VERMONT. Does anyone know WAYNE PARKER?

(No response)

MR. HUGHES: The Government intends to call Mr.

CLARENCE PARKER of BRATTLEBORO. Does anyone know CLARENCE PARKER?

(No response)

MR. HUGHES: The Government intends to call Mr. WILLIAM REILLY who now works in Springfield, Mass., and used to work in Burlington, Vermont. Does anyone know Mr. REILLY?

(No response)

MR. HUGHES: Another Government witness may be PHILLIP GALANES. Does anyone know PHILLIP GALANES?

(No response)

MR. HUGHES: I take it by your silence that you don't.

MR. CARROLL: May I have the spelling of that last name?

MR. HUGHES: G-A-L-L-A-N-E-S. Does anyone know STEPHEN DURBOROW? He lives in Brattleboro, Vermont, he is now a student at the University of Vermont?

(No response)

MR. HUGHES: I take it by your silence that nobody knows him. Any of you have any feelings about this case, strong or weak, or otherwise, that would make you not want to sit on this case?

(No response).

MR. HUGHES: Thank you, very much.

MR. MURPHY: Good morning. You are a little far away back there, so you can probably, it may be easier if I get up here closer. I am going to ask you a few questions and hopefully what we can do is, I will ask you the questions and I will

just ask the rest of the panel if they agree with your answer. All right, the fact that it is a gun case, does that bother you in any way?

JUROR No.

MR. MURPHY: Is the fact that they are handguns sway you one way or the other I mean you are not prejudiced for them or against them?

JUROR No.

MR. MURPHY: You understand that the Government has the burden of proof, they must prove the defendant's guilt beyond a reasonable doubt?

JUROR Right.

MR. MURPHY: That if you have any reasonable doubt that you must acquit him. Do you agree with that?

JUROR Right.

MR. MURPHY: Do you promise me that if you have any reasonable doubt that you will not hesitate to come in and say "not guilty"?

JUROR Right.

MR. MURPHY: Okay now, the, understand also that the defendant has no burden in this case. He doesn't even have to take the stand and do anything. He can just sit there and they could put witnesses on the stand and he has no obligation whatsoever to come forth and say "I didn't do it." Do you understand that?

JUROR Right.

MR. MURPHY: Do you agree with it, because it is the

natural tendency to say, well, if he didn't do it why doesn't he come up here and say he didn't do it, but the law says the people have the burden of proof, the defendant need prove absolutely nothing and therefore, he doesn't even have to take the stand. Do you understand that?

JUROR : I understand.

MR. MURPHY: You agree with it?

JUROR : I agree.

MR. MURPHY: Because, as it stands now, I can tell you that I anticipate him taking the stand. However. if hearing, after hearing all the evidence, I come to the conclusion that they have proved absolutely nothing, I am going to tell them to just sit right there, do you understand that?

JUROR : Yes.

MR. MURPHY: Okay. Now, I have been informed that just now, that they are going to call an agent to the stand, a Treasury Agent. Do you understand that he holds no more weight than anyone else? In other words, if you or I or anyone else here were to take the stand and testify, that our testimony should be given exactly the same credibility as his testimony? In other words, he can lie or tell the truth or be mistaken, just like anyone else. Do you understand that?

JUROR : Yes.

MR. MURPHY: Okay and you agree with that?

JUROR : Yes.

MR. MURPHY: Okay, thank you. All right now, do you understand that there may be people who testify in the case

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who are going to make certain statements from the stand, such as, they may say that my client and Mr. Carroll's client, did something. Now, just because they say it, doesn't mean it is true. Do you understand unfortunately I am in a situation where I am going to be hearing for the first time, exactly what these people say. Now, I don't claim to be Clarence Darrow or anyone else, I am not going to be able to get up there and pro[illegible] to you or, nobody is going to jump up and say "Yes, Mr. MURPHY, you are right, I am a liar." It never happens. What you are going to have to do is apply your common sense. Analyze what he is saying and determine for yourself.

THE COURT: Mr. MURPHY, the Court will instruct you to confine yourself to inquiries that are pertinent to the selection of the jury in the case.

MR. MURPHY: Okay, fine, Your Honor. Can you understand this and do you agree, that if I went outside and I walked back in here and said that you hit me, that it would be very, very difficult for you to prove that you didn't do it? If I just say, or if I just said "Yes, she hit me," can you understand that?

JUROR : Yes.

MR. MURPHY: Okay, thank you very much. All right, Mr. WEST, do you agree with what I have said?

MR. WEST: I do.

MR. MURPHY: Do you promise me if you have any reasonable doubt you will not hesitate to come back and say "not

Mr. WEBER, is there anything that I have said that you disagree with?

MR. WEBER: No, sir.

MR. MURPHY: Do you agree with what I am saying?

MR. WEBER: Yes, sir.

MR. MURPHY: Do you think you can give him a fair shake?

MR. WEBER: Yes, sir.

MR. MURPHY: The same fair shake you would want if you were sitting ov there?

Mr. weber; Right.

MR. MURPHY: Do you have any, if you have any reasonable doubt whatsoever as to whether or not he is guilty and you will not hesitate to come in and say "not guilty"?

MR. WEBER: No.

MR. MURPHY: Do you promise me that?

MR. WEBER: Yes.

MR. MURPHY: Thank you very much. Mrs. KING, is there anything I have said that bothers you one way or the other?

MRS. KING: No.

MR. MURPHY: Do you agree with what I have said?

MRS. KING: Yes.

MR. MURPHY:" You wouldn't hestitate to tell me that you don't agree with me if you did?

MRS. KING: No.

MR. MUPPHY: Thank you, very much. Mr. BEAUCHAMP, is there anything that I have said that bothers you?

MRS. BEAUCHAMP: No.

MR. MURPHY: Do you agree with what I am saying?

MRS. BEAUCHAMP: Yes.

MR. MURPHY: Do you think you are the type of person you would want to sit on the jury if unfortunately you or any member of your family were sitting over there?

MRS. BEAUCHAMP: Yes.

MR. MURPHY: You will give him a fair shake?

MRS. BEAUCHAMP: Yes.

MR. MURPHY: If you have any reasonable doubt you won't hesitate to come back and say "not guilty"?

MRS. BEAUCHAMP: No.

MR. MURPHY: Mrs MONROE, is there anything that bothers you?

MRS. MONROE: No.

MR. MURPHY: You will give him a fair shake?

MRS. MONROE: Yes.

MR. MURPHY: If you have any reasonable doubt, you won't hesitate to come back and say "not guilty"?

MRS. MONROE: No.

MR. MURPHY: Mr. FABIAN, do you agree with what I have said, sir?

MR. FABIAN: Yes.

MR. MURPHY: You won't hesitate to come in and say "not guilty" if you have a reasonable doubt?

MR. FABIAN: No.

MR. MURPHY: Okay all right, Mrs. FOX, is there anything I have said that bothers you in any way?

MR. FABIAN: No.

MR. MURPHY: Do you feel you are the type of a person that you would want sitting on the jury if, unfortunately, you were sitting over there?

MR. FABIAN: Yes, I do.

MR. MURPHY: The fact that it is a gun case bother you in any way?

MR. FABIAN: No.

MR. MURPHY: Mrs. AHONEN, is there anything I have said that bothers you?

MRS. AHONEN: No.

MR. MURPHY: Do you agree with what I am saying, though?

MRS. AHONEN: (Nodded).

MR. MURPHY: Okay if you have a reasonable doubt you will not hestitate to come back inand say "not guilty"?

MRS. AHONEN: No.

MR. MURPHY: Mrs. COLEMAN, is there anything I have said that disturbs you in any way?

MRS. COLEMAN: No.

MR. MURPHY: Do you feel that because of the fact that your brother is a Treasury Agent and that they may put an agent of the TReasury Department on the stand here to testify, that that is going to influence you in any way?

MRS. COLEMAN: No.

MR. MURPHY: In other words, all I am asking you to do is this. Judge his testimony the same way you would judge my testimony or anyone else's testimony and analyze it as to

whether or not he is telling the truth or not.

MRS. COLEMAN: Yes.

MR. MURPHY: Just because he is the Treasury Agent, doesn't mean he is telling the truth.

MRS. COLEMAN: Yes.

MR. MURPHY: Thank you very much. Mrs. SHAW, is there anything that I have said that disturbs you in any way?

MRS. SHAW: No.

MR. MURPHY: Can you give him a fair shake?

MRS. SHAW: Surely.

MR. MURPHY: Okay, Mrs. BRIGGS, how do you feel?

MRS. BRIGGS: (Nodded)

MR. MURPHY: About what I am saying?

MRS. BRIGGS: (No response).

MR. MURPHY: Do you agree with me?

MRS. BRIGGS: Yes.

MR. MURPHY: All right, do you understand that he is to be presumed innocent, that the people must prove him guilty beyond a reasonable doubt, if you have any reasonable doubt as to his guilt , you cannot and must not hesitate to come in here and say, "not guilty"?

MRS. BRIGGS: Yes.

MR. MURPHY: Do you promise me if I select you to sit on this Jury to do that?

MRS. BRIGGS: Yes.

MR. MURPHY: Do you promise that young boy over there to do that?

MRS. BRIGGS: Yes.

MR. MURPHY: Thank you very much.

THE COURT: Government's challenge.

THE CLERK: Mrs. Helen FOY.

THE MARSHAL: Thirteen.

VOIR DIRE EXAMINATION OF MRS. FOY BY THE COURT:

Q. Mrs. Foy, I believe you reside in Rutland?

A. Yes, sir.

Q. How long have you lived in Rutland?

A. All my life.

Q. And are you, will you state your employment and if you are married, will you state the employment of your husband?

A. I work for the Rutland Police Department.

Q. The Rutland Police Department?

A. (Nodded).

Q. In what capacity?

A. Traffic court clerk.

Q. How long have you worked for the Rutland Police Department?

A. Eight years.

Q. And would the fact that you have been engaged in police work incline you in favor of the prosecution or the Government, or would it bias you in favor of the defendant, or against the defendant?

A. No.

Q. What was your work before going to the, before coming to work for the Police Department?

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A. I didn't. I did house work.

Q. Is there any member of your household that are presently employed?

A. No.

Q. Are you acquainted with any of the witnesses that the, Mr. HUGHES has identified as might be called in this case?

A. No.

Q. Are you acquainted with any of the lawyers who are, who have also been identified even the U.S. Attorney's office, Mr. COOK, Mr. HUGHES, Miss JACOBSON or Mr. NEIDERMEIER?

A. Well, I know Attorney CARROLL pretty well.

Q. How long have you known Mr. Carroll?

A. Nine years.

Q. Are you acquainted with any other members of the firm, Mr. GEORGE, or Mr. SMITH?

A. (Nodded head)

Q. Mr. HANSEN?

A. I know HANSEN slightly, he used to be the City Attorney.

Q. Pardon?

A. He used to be City Attorney.

Q. Would your acquaintanceship with Mr. CARROLL through school or just because you live in the same town?

A. He was my lawyer.

Q. And how long ago was that?

A. Nine years.

Q. Would that fact that Mr. CARROLL worked - you engaged him

as your attorney effect your ability to try this case with fairness toward the defendant and in fairness toward the Government or would it introduce some factor that might incline you one way or the other toward either side?

A. No.

Q. Would your knowledge or acquaintanceship with the other members of his firm in any way effect your ability to try this case with fairness?

A. No.

Q. Have you ever heard this case discussed in any way?

A. No, I haven't.

Q. Did you pay close attention to the questions which I addressed to the members of the jury who were called previously to take seats in the jury box?

A. Yes.

Q. And did you hear the questions that were asked by the attorney for the Government and the attorney for the defendant?

A. Yes, I did.

Q. Would you have answered "yes" to any of the questions?

A. No.

Q. Let me ask you, do you have any strong feeling one way or the other, regarding offenses that relate to the Federal gun control law?

A. Would you repeat that, please?

Q. Do you have any feeling by reason of your experience with the Rutland Police Department, do you have any preconceive

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ideas or feeling, regarding the enforcement of gun control laws?

A. No.

Q. Have you or any members of your family, ever participated in any criminal proceeding as a witness or as a complainant or as a witness for the defendant or in any capacity?

A. No.

Q. Have you, yourself, ever been called upon to testify in any criminal proceedings that originated by reason of your employment?

A. No.

Q. Again I'll ask you, are there any questions that, having in mind the questions that I have previously asked the other jurors and the general questions, are there any that you feel called upon to respond to in the affirmative?

A. No.

THE COURT: Counsel may inquire.

MR. MURPHY: May I approach the Bench?

THE COURT: Yes.

(An off-the-record conversaton at the Bench ensued)

THE COURT: Counsel for the Government may inquire.

MR. HUGHES: Mrs. FOX, I believe you have stated that you are a personal friend of Mr. CARROLL, is that correct?

A. Yes.

Q. So you know of him other than through the legal work that

he did for you nine years ago, is that correct?

A. No, not really.

Q. You really haven't had much contact with him since then have you?

A. No.

Q. If it was a close case, would you believe his clients or the, - rather than the Government's witnesses?

A. No.

MR. HUGHES: Thank you.

MR. MURPHY: I have no questions, Your Honor.

THE COURT: Let me ask you, would you feel uncomfortable bearing in mind that Mr. CARROLL formerly represented you, as I understand it, would that make you uncomfortable in reaching a decision in this case, either way?

A. No.

THE COURT: Government's challenge.

THE CLERK: MISS MARY THERESA BIOTY.

THE MARSHAL: Fourteen.

VOIR DIRE EXAMINATION OF MISS BIOTY BY THE COURT:

Q. Is it Miss Bioty?

A. Yes.

Q. Where do you reside, please?

A. West Rutland.

Q. Did I pronounce your name correctly?

A. Yes.

Q. How long have you lived in West Rutland?

A. All my life.

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Q. Are you presently employed?
A. Yes.
Q. What is the nature of your employment?
A. I am secretary for Attorney O'NEILL.
Q. Joseph O'NEILL?
A. Yes.
Q. And how long have you worked for Mr. O'Neill?
A. Almost eleven years.
Q. Are you acqauinted with either the defendant or any of the attorneys who have been identified here?
A. Yes, Mr. CARROLL was Mr. O'Neill's former partner.
Q. And are you acquainted with any of the attorneys for the Government?
A. No.
Q. Are you acquainted with Mr. COOK in the U.S. Attorney's office?
A. I know of him.
Q. Are you acquainted with any other members of the law firm which Mr. CARROLL is a partner?
A. I know most of them.
Q. You know most of them?
A. Yes, not personally, but - -
Q. I take it Mr. CARROLL was associated with Mr. O'Neill during the time of your employment there?
A. Yes.
Q. Is there anything about the fact that he was associated with your employer that would effect your ability to

try this case with fairness according to the evidence that you hear in court?

A. I think it might.

Q. Is it in connection with Mr. Carroll's former employment, or, -

A. Yes.

Q. Well, the Court will excuse you, Miss Bioty.

(MISS BIOTY withdrew from the Jury box)

THE CLERK: Mr. Daniel J. PETERMAN.

THE MARSHAL: Fourteen.

VOIR DIRE EXAMINATION OF MR. PETERMAN BY THE COURT:

Q. Mr. Peterman, where do you reside?

A. South Londonderry.

Q. And how long have you lived there?

A. About two years.

Q. Where was your residence before moving to South Londonderry?

A. Bond Village.

Q. How long have you lived there in Bennington County or in that area, Windham County, - have you lived there most of your life?

A. Yah, most of my life in Vermont.

Q. Are you presently employed?

A. Yes, at Smith's, Incorporated, in Londonderry, it is a lumber mill.

Q. What is the name of the Corporation?

A. Smith's.

Q. It is a lumber mill or a lumber company?

A. Lumber company, right.
Q. And how long have you worked for that company?
A. For about six months.
Q. What was your work before?
A. I worked in a grocery store.
Q. In Londonderry?
A. In Bond Village.
Q. Are you married?
A. Yes.
Q. And is Mrs. Peterman employed?
A. Yes, she is a seamstress. She works at home. Sews for -
Q. Self-employed seamstress?
A. Right.
Q. Are you acquainted with any of the lawyers that have been identified here or any members of their law firms?
A. No.
Q. I take it you have never engaged any of, either, any of the members of the U.S. Attorney's staff or any persons in Mr. Carroll's law firm?
A. (Nodded)
Q. Have you or any member of your immediate family ever participated in any criminal proceeding either in the State or Federal court either as a complainant or as a defendant or as a witness or in any capacity?
A. No.
Q. Did you pay close attention to the questions which the

Court has asked the jurors who preceeded you and have you listened to the questions that have been addressed by counsel?

A. Yes, sir.

Q. Are there any questions that have been asked that you would have answered in the affirmative?

A. No.

Q. Is there any matter that you think of that you should call to the Court's attention and the attention of the parties that might in any way effect your ability to be entirely fair and objective in this case?

A. No.

Q. Without prejudice or bias toward the Government or against the Government or toward the defendant or in favor of the defendant or against the defendant?

A. No.

Q. Do you have any strong feelings regarding gun control cases or the laws that relate to -

A. No.

Q. - firearms?

A. (Nodded)

Q. Do you yourself own or possess a fire arm?

A. (Nodded)

Q. What is the nature of those?

A. Well, I have a target pistol and a rifle.

Q. But I take it from what you have said that you don't, the fact that you are the owner and possessor of the

firearms, wouldn't, in any way, impair your judgment to try this case or your ability, to try this case, according to the evidence that you hear in Court and the Court's instructions?

A. (Nodded).

Q. Thank you, Mr. Peterman. Counsel may inquire of Mr. Peterman.

MR. HUGHES: Mr. Peterman, what calibre is the target pistol?

A. .22

Q. What kind of a barrel does it have, long, or short?

A. Short.

Q. How short is it?

A. I think it is a six-inch barrel.

Q. 6 inches, thank you.

MR. MURPHY:

Q. You heard all the questions that I asked previously?

A. Yes.

Q. Is there anything that I have said that you disagree with here?

A. No.

Q. Do you understand what I said about the defendant being presumed to be innocent?

A. Yes.

Q. Do you understand what I said about that the government has the burden of proving him guilty beyond a reasonable doubt?

A. Yes.

Q. If they have any reasonable doubt that you must come in for an acquittal of the defendant?

A. Yes.

Q. Do you agree with that?

A. Yes.

Q. Do you promise me you will do that?

A. Yes.

Q. The fact that - does that bother you in any way?

A. No.

Q. The fact that this is a gun case, does that bother you in any way?

A. No.

Q. Okay, thanks a lot.

THE COURT: Government's challenge.

THE CLERK: Mr. James MABRY.

THE MARSHAL: Fifteen.

VOIR DIRE EXAMINATION OF MR. MABRY BY THE COURT:

Q. Mr. Mabry, you reside in Sandgate?

A. West Sandgate, yes, sir.

Q. How long have you lived there?

A. Three years.

Q. And where was your home before coming to Sandgate?

A. Manchester, Vermont, 25 years.

Q. Are you presently employed?

A. Yes, Factory Point Bank in Manchester. Maintenance man.

Q. And how long have you been employed in Factory Point Bank?

A. Ten years, in maintenance.
Q. And before that, what was your work?
A. I worked for the State of Vermont as a - at the race track in Pownal.
Q. Are you presently married?
A. Yes.
Q. Is Mrs. MABRY employed?
A. No.
Q. What was her last employment?
A. She worked in a small plant in Bethel Conn Electronics.
Q. That was quite a few years ago?
A. Yes, sir.
Q. Have you ever been engaged in the law enforcement work, either in the Town of Manchester, or, -
A. No, I hold a Deputy Sheriff's badge in Bennington County but I have never actually, - I don't do any work for the department. I have never served any papers.
Q. You have never engaged in any police work?
A. No, I haven't.
Q. Are there any members of your family or close relatives, involved in police work"
A. No.
Q. And enforcement work?
A. No.
Q. Do you , have you or any members of your immediate family ever participated in any criminal cases either as a complainant or defendant or in any capacity?

A. No, [illegible].

Q. Do you have any strong feelings, Mr. MABRY, regarding the enforcement of the Federal gun control laws?

A. No.

Q. Do you know of any reason that might prevent you or impair your ability to try this case with complete fairness toward both parties, the Government as well as the accused?

A. I think I can be very fair.

THE COURT: Thank you. Counsel may inquire. Let me ask you about that, Mr. HUGHES, did you pay close attention to the other questions that I addressed to the Jury and the counsel, including the identification of the witnesses?

A. Yes.

Q. Did you hear the names of the witnesses?

A. Yes, I did and I don't know any of them.

Q. Was there any question that was asked during the course of the examination and selection of the Jury, that you would have answered "yes" to had you been in the jury box?

A. I would have in regards to the questions I would have gone along with the way the Jury said.

Q. You know of none that you would have had to say "yes" to?

A. No.

THE COURT: Thank you, counsel may inquire.

BY MR. HUGHES:

Q. Mr. MABRY, do you own a weapon?

A. Yes.

Q. What kind of a weapon is that?

A. 12-guage shot gun.

Q. Thank you very much.

BY MR. MURPHY:

Q. It's getting a little late so I will be as quick as I can. There is nothing that I have said that you disagree with, is that correct, sir?

A. Yes.

Q. Do you agree with the principles of law that I have given to the other people when I inquired of them regarding "reasonable doubt"?

A. Yes.

Q. And presumption of innocence?

A. Yes.

Q. Do you understand that just because a Treasury Agent takes the stand that he has no more credibility than anyone else?

A. Yes.

Q. Okay, thank you very much.

THE COURT: Government's challenge.

THE CLERK: Mrs. Dorothy H. WESLEY.

THE MARSHAL: Sixteen.

VOIR DIRE EXAMINATION OF JUROR WESLEY BY THE COURT:

Q. Mrs. Wesley, you reside in Sandgate?

A. Right.

Q. How long have you lived there?

A. Art Department.

Q. Have you, or any members of your family, ever been the victims of a criminal offense?

A. No, I have not.

Q. Have you, or any members of your family, ever participated in criminal proceedings, either State or Federal Court, as a complainant or defendant, or as a witness, or in any other capacity?

A. No.

Q. Did you hear the questions that have been asked of the jurors who preceeded you?

A. I have and I paid close attention to those.

Q. You did pay close attention to those?

A. (Nodded head)

Q. Are there any of those questions that you feel qualified or feel called upon to answer in the affirmative to which you would answer "yes"?

A. Not that,...(mumbling)....

Q. Do you know of any reason or is there any matter which you should bring to the Court's attention that might bear on your qualifications for a juror so far as you are aware?

A. I do not.

Q. And do you know of any reason why you couldn't try this case with total fairness toward the Government as well as the accused?

A. I do not.

Q. According to the evidence that you hear and the Court's instructions?

A. I do not.

THE COURT: Counsel may inquire.

MR. HUGHES: I have no questions, Your Honor.

BY MR. MURPHY:

Q. Did you hear all of the previous questions I have asked all the other jurors?

A. I have.

Q. Your answers to those would be no different?

A. No.

Q. Do you agree with me when I say that people have the burden of proving the defendant's guilt beyond a reasonable doubt if you have any reasonable doubt you must come in to Court with an acquittal?

A. Yes.

Q. Do you agree with it that that is the way it should be?

A. Yes.

Q. All right, do you feel that you will be the type of a juror that you would want sitting on a jury if, unfortunately, your son or your husband was there?

A. Yes.

Q. Would you give him a fair shake?

A. Yes.

Q. If you have any reasonable doubt you would come in and you would not hesitate to come in and say "not guilty"?

A. Yes.

Q. Do you promise me that?

A. Yes.

Q. Thank you, very much.

MR. HUGHES: Your Honor, the Government is content.

THE COURT: Very well. Defendant's challenge.

THE CLERK: Mrs. Mary L. BEAUDRY.

THE MARSHAL: Seventeen.

VOIRE DIRE EXAMINATION OF MRS. BEAUDRY BY THE COURT:

Q. Mrs. Beaudry, will you tell us of your residence?

A. Lake Bomaseen.

Q. And that is in the Town of CASTLETON or is it?

A. Yes.

Q. And how long have you lived there?

A. About four and a half years.

Q. Are you presently employed?

A. Yes.

Q. Where are you employed?

A. At the Rutland Hospital.

Q. In what capacity?

A. I am a ward secretary.

Q. Ward secretary?

A. Yes.

Q. And how long have you worked for the Rutland Hospital?

A. A year and a half.

Q. And what was your work before then?

A. I was home for five years with my children and before that, I worked for Moore Business Forms.

Q. Is Mr. BEAUDRY employed?

A. Yes.

Q What is his work?

A. US Simica...*(incoherent)

Q. I didn't hear you.

A. US Simica? formerly the 3 M Company in Rutland.

Q. And how long has he worked for them?

A. About nine years.

Q. Have you paid close attention to the questions that have been previously asked of the jurors who have preceeded you in the jury box?_

A. (Nodded head)

Q. Are there any of those questions that you feel that you would have answered "yes" had you been in the jury box at that time?

A. No. I am not sure, my brother-in-law, I believe, has been arrested at one time but I am not sure what the charge was and I don't know who the, - maybe ten years ago. (Couldn't hear)

Q. Would that, - I take it you didn't participate in any way with that either as a witness, or, -

A. No.

Q. And is there anything about that episode that would...

A. No.

Q. .. as you understand it or maybe even if you heard about it?

A. No.

Q. - chat would in any way, effect your ability to try this case with fairness to the Government as well as complete fairness to the accused?

A. No.

Q. Are any members of your family or close relatives, engaged in any law enforcement work, so far as you know?

A. No.

Q. And do you have any strong feelings regarding the enforcement of Federal gun control laws or laws which deal with the control of fire arms?

A. No.

Q. And I take it that you are not acquainted with any members of the law firm of Mr. CARROLL, that he is associated with or any of the lawyers involved in the U.S. Attorney's office or Mr. "ALDRICH"?

A. No.

Q. You know none of the participants in the trial, including the defendant?

A. No.

THE COURT: Counsel may inquire.

MR. HUGHES: I have no questions, Your Honor.

THE COURT: We will take a brief recess before proceeding and I ask the jurors to resume their seats in the present order when we reconvene.

(RECESSED FROM 11:20 A.M. UNTIL 11:43 A.M.)

BY THE COURT:

Q. Mrs. BEAUDRY, I take it there is, you know of no reason to

impair your ability to try this case according to the evidence that you hear in court?

A. No.

Q. The Court's instructions also, with complete and total fairness to the Government, as well as to the defendant?

A. (No response)

THE COURT: Defendant's challenge.

THE CLERK: Mrs. Miriam H. SHAFFER.

THE MARSHAL: Eighteen.

VOIR DIRE EXAMINATION OF JUROR SHAFFER: (By The Court)

Q. Mrs. Shaffer, would you tell us where you reside?

A. 49 South Main Street in Rutland.

Q. And how long have you lived in Rutland?

A. Five years.

Q. Where was your home before that?

A. Oak Park, Illinois.

Q. And how long have you lived in Illinois?

A. 24 years.

Q. Are you presently employed, Mrs. Shaffer?

A. I am the organist director of the United Methodist Church in Rutland and I teach piano in my home.

Q. And have you worked in music either for the church or in teaching ever since you have been in Rutland?

A. Yes, I have.

Q. Are you presently married?

A. I am a widow.

Q. And what was your former, your deceased husband's work?

A. He worked, - he was an office employee for the Aluminum Company of America at a plant in Illinois.

Q. Did he work for them for a number of years?

A. 21 years.

Q. Are there any persons living in your household other than yourself, who are employed?

A. No.

Q. Did you hear the questions that were addressed to the jurors who preceeded you?

A. Yes.

Q. Did you pay close attention to them?

A. Yes.

Q. Are there any of those questions that you would respond to in the affirmative?

A. No.

Q. Let me ask you specifically, have you or any close relatives, or members of your immediate family, ever been the victims of any criminal offense?

A. No.

Q. Have they ever been involved in any criminal proceeding as a complainant or as a defendant or in any capacity, or as a witness?

A. No, sir.

Q. And I take it you are no, you nor anyone in your household have never been employed by the United States Government?

A. No.

Q. Do you know of any reason that might effect your ability to try this case with complete fairness?

A. No.

Q. Toward the Government, as well as the Defendant?

A. Yes, sir.

Q. And can you think of anything that you should call to the Court's attention and the attention of counsel, that you would feel might bear on your selection a. a juror in this case?

A. There is one complication. If I would happen to be held over Thursday night, that is a rather special night at church.

Q Well, we will bear that in mind and do what we can.

THE COURT: Defendant's challenge.

THE CLERK: Mrs. MARIAN CANAPA.

THE MARSHAL: Nineteen.

VOIR DIRE EXAMINATION OF JUROR CANAPA BY THE COURT:

Q. And is it Mrs. Canapa?

A. Yes.

Q. Is that the correct pronunciation?

A. Yes.

Q. Where do you live, please?

A. I live in Rutland these last two years.

Q. Where did you live before that?

A. I, before that, I lived in Proctor for 32 years and in Rutland and Brandon before that.

Q. Are you presently employed?

A. No, I am a retired teacher.

Q. I take it you spent most of your life in the teaching profession?

A. Both in average children and training at the Training School.

Q. In Brandon?

A. In Brandon.

Q. Are you presently married?

A. Yes, my husband is retired.

Q. What was his work before retirement?

A. Office of the Vermont Marble for over forty years.

Q. And did you hear the questions that were addressed to the other jurors?

A. Yes, I did.

Q. And you listened attentatively to the questions that have been asked by the Court as well as the attorneys?

A. Yes.

Q. Are there any of those questions you would have answered "yes" to had you been in the jury box at that time?

A. May I ask you what you meant when you said, do you have any strong feelings regarding the enforcement of the laws of the United States as they relate to the control and sale and so forth, of guns?

Q. Well, do you have any strong feelings one way or another as to those laws?

A. In other words, do I think the law should be enforced?

Q. No, do you have any feelings that it should be enforced with

vigor or do you feel that they are laws that should not be enforced generally or shouldn't be carried out to the letter?

A. I feel it honest to say if there is a law that it should be enforced, whatever it is.

Q. Regardless of whether it is in this particular area or any other area?

A. You mean, -

Q. Whether it relates to guns or any other law?

A. Yes.

Q. Well, that is a reasonable feeling, I'm sure. Counsel may inquire.

MR. HUGHES: I have no questions, Your Honor.

BY MR. MURPHY:

Q. Mrs. "Beaudry", I'm sorry I have to keep coming up and asking basically the same questions but it is rather an important matter. Do you understand all of the questions that I asked in regard to reasonable doubt?

A. (Nodded head)

Q. Do you agree?

A. (Nodded head)

Q. Do you have any, if you have any reasonable doubt, you are not going to hesitate to say "not guilty" is that correct?

A. (Nodded head)

Q. Do you understand the, when the Judge originally read portions from an indictment to you, it merely is a

means of bringing the defendant here in court. Do you understand that?

A. (Nodded head)

Q. The defendant has pleaded "not guilty," do you understand that?

A. (Nodded head)

Q. Just because he is here doesn't mean he did anything?

A. (nodded head)

Q. They have to prove it beyond a reasonable doubt. He says, "I did not do it." Do you understand that?

A. (Nodded head)

Q. Do you agree with that?

A. (Nodded head)

Q. The mere fact that somebody is present at the scene and something happens, do you feel that he must have known something about it, he must have had something to do with it? In other words, where there is smoke there is fire? In other words, because I am there, I knew something about, - I had something to do with it? I mean, can you understand that somebody can be close by and not know anything and not have anything to do with something?

A. Yes.

Q. All right, do you feel that the people have an obligation to put all of the evidence in front of you, whether or not it is favorable to them or unfavorable to them?

A. Yes.

A. Yes.

Q In other words, if you felt that one of the witnesses wasn't favorable to them and they didn't put him on the stand, and let you hear what he had to say, you would think there was something wrong with that, is that correct?

A. Yes.

Q. Ma'am, how do you feel about what I said?

A. I agree with you.

Q. Do you agree with me?

A. Yes.

Q. You think it is right, that is the way it should be?

A. Yes.

Q. In other words if your son was sitting over there, you would want people on this jury to hold the people to their burden of proving this beyond a reasonable doubt?

A. Yes, sir.

Q. Do you have any, if you have any reasonable doubt, you will not hesitate to come in and say "not guilty"?

A. That's right.

Q. In other words, all I am asking for and all that Mr. CARROLL is asking for, is that you give that young man the same fair shake that you would want as a member of your family?

A. (Nodded head).

Q. Right? Okay, do you agree with what I have said previously with regard to whether or not the people put all the

evidence in front of you?

A. Yes.

Q. In other words if somebody who says this guy didn't do it and they don't bring him in and they don't put him on the stand and they don't let you hear that, you would think that something is wrong, is that correct?

A. Yes.

Q. Do you understand what I said about just because he is sitting over there, it doesn't mean he did it?

A. I understand that.

Q. He says he is not guilty, okay?

A. Yes.

Q. All right, thank you, very much. How do you feel about what I said?

A. Yes.

Q. Just because the defendant is there, doesn't mean he did anything, just because he was nearby and something happened, doesn't mean he had anything to do with it, the people have to prove it beyond a reasonable doubt, do you agree with that?

A. I agree.

Q. You will not hesitate to promise me that?

A. I promise you.

Q. You will come in and say "not guilty"?

A. Okay.

Q. All right, thank you very much.

MR. MURPHY: May I just ask one more question?

A. Yes.

BY MR. MURPHY

Q. Mrs. SHAFFER, I don't want to inconvenience you in any way, but do you feel you would be inconvenienced?

A. If the jury was held over, I might be, because I am the organist of the church.

MR. MURPHY: All right, thank you, very much.

THE COURT: Defendant's challenge.

THE CLERK: Mr. Charles DAYTON.

THE MARSHAL: Twenty.

VOIR DIRE EXAMINATION BY THE COURT OF JUROR DAYTON:

Q. Mr. DAYTON, you live in Fair Haven?

A. Yes.

Q. How long have you lived there?

A. Well, all my life except for three years when my folks moved from there and 3 years that I was in the service.

Q. Are you presently employed?

A. Yes.

Q. What is the nature of your employment?

A. I am driving a dump truck in a slate quarry.

Q. Where?

A. In Fair Haven.

Q. What is the name of the company?

A. Vermont Structural Steel.

Q. How long have you been working for that employer?

A. Three and a half years.

THE COURT: Before that, who was your employer?

A. I worked in Fair Haven Mills in Fair Haven for 19 years.

Q. Are there any other persons in your household that are presently employed?

A. Yes, my wife, she works at General Electric and my daughter works at General Electric.

Q. They are employed here in the plant in Rutland?

A. Yes.

Q. Have you or any members of your family, ever been the victims of a crime or have they ever participated in any criminal proceedings as a complainant or as a defendant or in any capacity?

A. No.

Q. Have youever been engaged in law enforcement work?

A. No.

Q. And do you have any members of your family or close relatives who are?

A. No.

Q. You have heard the other questions that have been asked of the jurors in determining their selection in this case?

A. Well, yes and that PARKER, well, I don't know him but I have relatives that -

Q. Which PARKER? I believe there are two who are referred to here, do you have in mind one?

A. Just the PARKER name, I don't know as they are related to me or not but I have relatives, PARKERS.

Q. Where do they live?

A. They are around POULTNEY, RUTLAND.

Q. None in BRATTLEBORO?

A. Not that I know of.

Q. Are there any other matters that you feel you should bring to the Court's attention that might have some bearing on your qualifications as a juror?

A. No.

Q. Could you try this case according to the evidence?

A. Yes.

Q. And the Court's instructions with total fairness to all concerned?

A. Yes.

THE COURT: Defendant's challenge.

THE CLERK: Mr, Albert IZZO.

THE MARSHAL: Twenty-one.

VOIR DIRE EXAMINATION OF JUROR IZZO BY THE COURT:

Q. Mr. IZZO, you live in Proctor?

A. Yes.

Q. Is that the correct way of pronouncing your name?

A. Yes.

Q. How long have you lived in Proctor?

A. 13 years.

Q. And are you presently employed?

A. Yes.

Q. What is the nature of your work, please?

A. Maintenance man for New England Telephone and Telegraph.

Q. Your headquarters is in Rutland or Proctor?
A. Rutland.
Q. Rutland. How long have you been employed by the telephone company?
A. 23 years.
Q. ARe there any other persons residing in your home that are presently employed?
A. No.
Q. Or have they been in the recent past?
A. No.
Q. Did you hear the other questions that have been addressed to the jurors that preceeded you?
A. Yes.
Q. Are there any of those questions that you would be, that you would have answered "yes" to?
A. No.
Q. Do you know of any reason that might impair your ability to try this case with complete fairness to both the plaintiff, the Government, and the defendant according to the evidence that you hear in court and the Court's instructions?
A. (Nodded head)
Q. Do you know of any matter that you should call to the Court's attention regarding the qualifications as a juror in this case which might prevent you in any way of rendering a fair and impartial verdict?
A. No.

THE COURT: Counsel may inquire.

MR. HUGHES: I have no questions, Your Honor.

BY MR. MURPHY:

Q. I think I'll probably have to stand over here in order to address both of you, both Mr. DAYTON and Mr. IZZO. Have you both heard all of the questions that I have previously asked?

A. (No response)

Q. Basically do you agree with what I am saying?

A. Yes.

Q. Do you think that's right, that that is the way it should be?

A. Sure.

Q. In other words, the defendant shouldn't have to come in here and prove he is innocent, but the people should have to prove he is guilty beyond a reasonable doubt, otherwise you must acquit him, do you agree with that?

A. Yes.

Q. Do you agree with that, Mr. Izzo?

MR. IZZO: Yes, sir.

Q. Do you feel that just because he is here, in other words, they have brought him in here, the indictment has been returned, that he must have done something, otherwise he wouldn't have been here, do you in any way, feel that?

A. (Nodded head).

Q. In other words, if he didn't do anything, he wouldn't be

here, I mean do either one of you feel that way, in any way?

A. No, like what you said before, you could be in a certain spot and not be involved with anything.

Q. In other words, a lot of people are arrested that are innocent, do you agree with that?

A. Yes.

Q. Do you agree with that, Mr. Izzo?

MR. IZZO: (Nodded head)

Q. And do you promise me that if, after hearing all of the evidence in the case, you come to the conclusion that they haven't proven him guilty, beyond a reasonable doubt, that you will not hesitate to come in here and say the young man is not guilty, you will give him the same treatment you would give yourself. Do either one of you own handguns?

A. MR. IZZO: I have a single-barreled shot gun.

Q. Okay, fine. Now, the fact that the defendant is on trial in this court room, he is entitled as each and every person is, to a fair trial. In other words, this isn't a battle between Mr. CARROLL and myself and the two United States Attorneys, it is a search for the truth. Do you feel that there would be something wrong if they had a witness that didn't agree with what they said and said the man is innocent and they didn't bring him in here, to court, don't you feel there is something wrong with that?

A. MR. IZZO: I don't know, maybe he couldn't get here.

Q. No, in other words I'm telling you he's here. He's here.

MR. HUGHES: Your Honor, I'm going to object to this whole line of questioning. I believe the counsel is testifying. If he wants to testify, bring the witness in.

THE COURT: Yes, The Court will sustain the objection.

MR. MURPHY: All right, I have no further questions, thank you.

THE CLERK: MR. Floyd SUMMER, and MRS. Jane T. WEINHAGEN.

THE MARSHAL: Twenty-two, and twenty-three.

VOIR DIRE EXAMINATION OF JURORS SUMMER AND WEINHAGEN BY THE COURT:

Q. Mr. SUMMER, will you tell us where you reside?

A. 7 Foster, Rutland.

Q. How long have you lived in Rutland?

A. 13 years.

Q. And your present employment?

A. Vermont Transit Bus Company.

Q. You have worked for them for some time?

A. 30 years.

Q. Are there any other persons in your home that are presently employed?

A. No.

Q. And will you tell us, pronounce your name please Mrs. WEINHAGEN, is it WEINHAGEN?

A. That's right.
Q. Where is your home?
A. Fair Haven.
Q. And how long have you lived there?
A. About five years.
Q. Where was your home before that?
A. East Orange, New Jersey.
Q. And, are you presently employed?
A. No.
Q. Have you been employed since coming to Rutland?
A. No.
Q. What was your employment prior to that time?
A. Insurance adjustor, an insurance adjustor.
Q. And, that was in New Jersey?
A. Right.
Q. How long were you employed?
A. Three and a half years.
Q. And did you have any other employment?
A. No.
Q. Are you presently married?
A. Yes.
Q. And is MR. WEINHAGEN employed?
A. Yes.
Q. What is his work?
A. Radio advertising salesman for W S Y B radio.
Q. Did he have different employment before coming to Vermont?
A. No.

Q. What was his work in New Jersey?

A. He was going to school.

Q. I will ask you Mr. SUMMER if you heard the questions that the Court has asked the jurors and have you heard the questions that counsel have asked, including the names of the witnesses?

A. Yes, I do.

Q. Are there any of those questions that you would be called upon to answer "yes" to?

A. No.

Q. Do you know of any reason that might bear on your qualifications as a juror or that might impair your ability to try this case according to the evidence that you hear in court and the Court's instructions?

A. No.

Q. Have you, do you know any of the witnesses that were identified by the defense by the counsel for the Government as the witnesses that might be called?

A. No.

Q. And, Mrs. WEINHAGEN, did you hear the questions?

A. Yes.

Q. And are there any questions that you would answer yes to, had you been in the jury box at that time?

A. No.

Q. Do you know any reason that might impair your ability to try this case according to the evidence that you hear in court?

A. No.

Q. And the Court's instructions with fairness to the defendant and fairness to the Government?

A. No.

Q. I will ask each of you, Mr. SUMMER, if you or any members of your family or close relatives have been engaged in law enforcement work?

A. No.

Q. Have they ever been the victims of a crime or have they ever participated in any criminal proceedings?

A. No.

Q. So far as you know?

A. No.

Q. I will ask the same questions of you Mrs. WEINHAGEN.

A. Yes, a close friend is a state trooper, on that question.

Q. And that is the Vermont State Police?

A. Yes.

Q. And is there anything about that friendship that would affect your ability to try the case and incline you one way or another?

A. No.

Q. You simply know a person who is presently employed by the Vermont Department of Public Safety.

A. I guess that is what you call it.

THE COURT: Counsel my inquire.

MR. HUGHES: I have no questions, Your Honor.

MR. MURPHY: Mrs. WEINHAGEN, you have friend that

Voir Dire Examination Of Mrs. WEINHAGEN By Mr. MURPHY:

is a state trooper, is that correct?

A. Yes.

Q. What is his name?

A. Ed Lucas.

Q. Not me, I don't know.

A. No.

Q. Okay, you have heard all the questions I have asked?

A. Yes.

Q. I don't have to go through them?

A. No.

Q. Do you agree, basically, with what I say?

A. Yes.

Q. Okay, thank you very much. All right, Mr. SUMMER, have you heard all the questions I have asked?

A. Yes, I have.

Q. Do you agree with everything I have said?

A. Yes.

Q. If you have a reasonable doubt as to the guilt of that young man, you will not hesitate to come back in and say "not guilty?"

A. No.

MR. MURPHY: Thank you very much, sir.

MR. HUGHES: Government is content, Your Honor.....

THE COURT: Very well, will counsel approach the Bench?

(An off-the-record conversation at the Bench ensued)

THE CLERK: Would the following people please take

their places in the back of the courtroom: Mr. WEST, Mr. WEBER, Mrs. FOX, Mr. MABRY, Mrs. KING, Mrs. MONROE, Mrs. CANAPA, Mr. DAYTON and Mr. IZZO.

JURY, AS EMPANELED

| | | |
|---|---|---|
| 1. | HUBBARD, Mrs. Barbara J. | RUTLAND, VERMONT |
| 2. | WESLEY, Mrs. Dorothy H., | Rochester, Vermont |
| 3. | PETERMAN, Daniel J., | Londonderry, Vermont |
| 4. | BEAUDRY, Mrs. Mary L., | Bomoseen, Vermont |
| 5. | BEAUCHAMP, Mrs. Barbard J., | Rutland, Vermont |
| 6. | SUMNER, Floyd C., | Rutland, Vermont |
| 7. | FABIAN, John | West Rutland, Vermont |
| 8. | WEINHAGEN, Mrs. Jane T., | Fair Haven, Vermont |
| 9. | AHONEN, Mrs. Freda H., | Ludlow, Vermont |
| 10. | COLEMAN, Mrs. Esther V., | Wallingford, Vermont |
| 11. | SHAW, Mrs. Mary L., | Pittsford, Vermont |
| 12. | BRIGGS, Mrs. Betta A., | Ludlow, Vermont |

THE COURT: Will you administer the oath to the jurors who have been selected in this case?

(At this point, the Clerk duly administered the oath to the Jury)

THE CLERK: Please be seated.

THE COURT: The remaining jurors who have not been selected to sit in this case will be excused. We cannot tell you with precise certainty when it will be necessary for you to come back but I expect it will be next Monday at 9:30 and you will be excused until that time. However, the Clerk will notify you at the precise time you are to come in, in the event that

(continued on next page)

it is necessary for you to appear on Monday at the time appointed. Otherwise he will indicate a different date but you will be notified in any event by the Clerk by telephone or in writing as to the time and place to appear. You may be excused at this time, we thank you for your attendance today and look forward to having you return.

(Those people excused as indicated at 12:15 p.m.)

THE COURT: The case will proceed in the following order: The Government, the counsel for the Government may make an opening statement outlining the case he intends to present in this matter and the Defendant may make an opening statement, outlining his defense.

Neither of the parties are required to make an opening statement, but in the event such opening statements are made, they are not evidence but are merely to aid you in generally understanding the nature of the case and the significance of the evidence as it is presented. After the opening statements are concluded, the Government will introduce evidence and at the conclusion of the Government's evidence, the Defendant has the right to introduce evidence, but he need not do so.

If the evidence is presented in behalf of the Defendant, rebuttal evidence may be introduced. And at the conclusion of all the evidence, the attorneys will make their closing arguments.

I want to remind you that faithful performance of your duties is vital to the administration of justice. Now, the law applicable to the case will be contained in the instructions

which I will give you during the course of the trial, either while the evidence is being presented or at the conclusion of all the evidence and it is your duty to follow the Court's instructions. However, it is your duty to determine the facts and to determine them from the evidence, and the reasonable inferences that arise from such evidence. And in so doing, you must not indulge in guess-work or speculation.

The evidence which you will be called upon to consider will consist of the testimony of the witnesses and any exhibits that are admitted into evidence. The term "witnesses" means anyone who testifies in person or by deposition including the defendant.

The admission of evidence in court is governed by certain rules of law and from time to time it may be the duty of the attorneys to make objections and it is the Court's duty to rule on these objections and determine whether or not you can consider certain evidence. You must not concern yourselves with the objections, or the Court's reasons for ruling on such matters. But you must not consider testimony or exhibits to which an objection has been sustained, and or, which has been ordered stricken. Opening statements and closing arguments by the attorneys are intended to help you in understanding the evidence in applying the law. But bear in mind, opening statements of the attorneys are not evidence. You must not be influenced in any degree by any personal sympathy for or prejudice against the Government, or the defendant in this case. Each is entitled to the same fair and impartial consider-

ations.

Now, no statement, ruling, or remark which I may make during the presentation of the testimony is intended to indicate to you my opinion as to what the facts are. You are to determine the facts. And in this determination, you alone must decide upon the believeability of the evidence and its value. And consider the credibility or the weight and value of the testimony of any witness;you may take into consideration the interest that the witness has, in the outcome of the case, the relationship of the witness to the Government, or to the defendant, the inclination of the witness to speak truthfully or not, the probability or improbability of the witness' testimony and all other facts or circumstances in the case.

Thus, you may give the testimony of any witness just such weight and attach such value to the testimony of a particular witness as you believe the testimony of such witness is entitled to receive. Until the case is submitted to you for deliberation, you must not discuss the case with anyone or remain within hearing of anyone who may happen to be discussing it.

You neither should read any newspaper articles nor listen to any radio broadcasts nor view any television programs which may or may not happen to be discussing the case.

After the case has been submitted to you for a dèsision, you must discuss the case only in the jury room when all members of the jury are present. You are to keep an open mind and you must not decide any issue in the case until the evidence in the case has been submitted to you, all of the evidence submitted

to you for your deliberation under instructions from the Court. We will recess at this time, and bear in mind these instructions during the course of your recess. The Court's directions that you must not discuss the case with any one, applies, of course, outside the building and it also applies to any discussion that may happen to occur within the building. In either event, you are not to discuss the case or listen to any discussion of the case under any circumstances.

The Court will recess at this time and ask you to return at 1:30.

(The Court recessed at 12:22 p.m.)

(The Court reconvened at 1:37 p.m.)

THE COURT: Will counsel approach the Bench, please?

(An off-the-record conversation ensued.)

THE COURT: The record may show that agent REILLY may sit in the courtroom not subject to the rule requiring excluding of witnesses. Other than the Defendant, of course. Does the Government wish to make an opening statement?

MR. HUGHES: Yes, Your Honor.

MR. NIEDERMEIER: May it please the Court. Good afternoon ladies and gentlemen. As His Honor has already indicated to you, my name is JEROME NIEDERMEIER and I am an Assistant United States Attorney here in Rutland. And with me is Assistant United States Attorney JOHN HUGHES. We have been assigned the responsibility of presenting the evidence in this case to you.

The purpose of an opening statement, which is what I will

make to you now, is that--to give you an overview or an outline of what the evidence is that the Government will present to you, in order to show that the Defendant has violated the and is guilty. It's merely to give you an outline so you can, more easily follow the evidence as various witnesses testify.

As you will understand, I believe, as the evidence comes in, this is not a complex or difficult case. It is rather simple, I believe, and rather straight forward. It began on September 20th, 1975, when the Defendant and another individual left New York and came to Brattleboro, Vermont. They came to Brattleboro, Vermont to buy guns. They drove to Brattleboro, and arrived there in the morning, and when they got there, they stopped WAYNE PARKER, in Brattleboro, and asked WAYNE PARKER how they could get guns. Well, he told them that they had to be a resident of Vermont in order to buy a gun in Vermont. The Defendant asked WAYNE if he could help him get some guns. WAYNE PARKER then went to see his brother, CLARENCE PARKER. He woke CLARENCE PARKER up, and asked CLARENCE PARKER, if CLARENCE PARKER could help the Defendant and the other individual who came with the Defendant to get guns.

CLARENCE indicated that he thought he could help them get guns because he had a Vermont Identification. And he showed his Vermont Identification which was a taxi identification at which point the Defendant him if he was a policeman, a cop. CLARENCE PARKER said "No." CLARENCE PARKER then said that he could help the Defendant get guns, and the Defendant offered him $2.00. CLARENCE PARKER said, "It's not enough."

So, the Defendant offered him $10.00 and that was enough.

They got into the car, that had come up from New York, Wayne PARKER, Clarence PARKER, the Defendant, and George SORIENTI, who was with them and they drove around Brattleboro until they got to SAM'S ARMY-NAVY STORE. The Defendant and Clarence PARKER walked in there--the Defendant looked around and at some hand guns; asked the clerk about some hand guns; told the clerk that he wanted the gun for target practice, and when the clerk looked at him quizzically, he turned around and left.

Then the Defendant and Clarence PARKER went to CLAPP'S SPORTING GOODS STORE in Brattleboro. And the Defendant, selected a .22 Derringer pistol and some shells and a 38 Colt pistol. He looked at the guns; he picked them out; he even fitted the .38 into his belt to make sure it fitted all right; he paid for the guns and then he stood by while Clarence PARKER signed the fire-arm registration form that the buyer of a handgun is required to sign.

Clarence PARKER wasn't buying those guns. But, Clarence PARKER was a resident of Vermont and only he could buy those guns--only he could sign for those guns.

From there, they went to GALLANES' SPORTING GOODS STORE, again in Brattleboro. The Defendant went into the store, looked for some hand guns, tried on a holster, found a 38 cal. hand gun that he wanted, got some shells for it, the Defendant paid for that gun. Again, the Defendant waited while Clarence PARKER filled out the fire-arms forms saying that, oh, he was

buying the gun because he was a resident of Vermont.

They left GALLANES' SPORTING GOODS STORE and Clarence PARKER had the three guns in a brown paper bag. Walked over to the Defendant's car, New York car, New York license plates, and the Defendant told Clarence PARKER, "Put the guns in the trunk." Trunk was closed and the Defendant paid Clarence PARKER $20.00. $10 for himself and $10 for his brother Wayne.

Before they left, the Defendant asked Clarence PARKER, "Could you help me get some more guns some other time?"

Clarence PARKER said, "Sure, where can I get a hold of you?"

The Defendant wrote out on a napkin a New York telephone number and told him that that number was in Queens, New York, and off he went to leave Clarence PARKER and Wayne PARKER there.

Ladies and gentlemen, the Defendant is charged in the indictment, as His Honor has indicated to you, on ten different violations. Violations one, two, and three charged the Defendant with coming from New York, obtaining hand guns in Vermont, and then taking the hand guns from Vermont back to New York. There is--each seperate gun constitutes a seperate violation. So, that's one, two and three.

The next three violations, four, five and six, again charge the Defendant with aiding and abetting Clarence PARKER, that is, helping Clarence in obtaining the guns and then inducing Clarence, by the $10, to transfer the guns to him, again, in violation of the law. Because Clarence PARKER will tell you that he knew that the Defendant was not from Vermont. He knew he was from New York. And the counts seven, eight,

and nine, again, three counts for three different guns, charges the Defendant with helping with the assisting with aiding and abetting Clarence PARKER in falsifying the Federal fire-arms form, which says, that the person who signs the form is buying the gun. The Defendant gave Clarence PARKER $10 so he would do that. So he would violate the law.

Finally, the last count--count ten, charges the defendant Clarence PARKER, Wayne PARKER, and the individual who came with the Defendant, George SORIENTI, conspired to do it--they conspired to violate the laws. In other words, they planned to do it. They came up from there and they got Clarence PARKER and Wayne PARKER and they went from step to step, to store to store, with one purpose and one plan in mind, to violate the law.

After you have heard all the evidence, ladies and gentlemen, we ask you to return a verdict of "guilty" and that you find the Defendant guilty of each and every violation with which he is charged. I want to thank you for your interest and attention, and I know I can thank you in advance for your interest and attention that I know that all of you will give to this trial. Thank you.

MR. MURPHY: I will waive the opening statement, Your Honor.

THE COURT: Very well. The Government will proceed.

W-A-Y-N-E E-D-W-I-N P-A-R-K-E-R, having been called as a witness by the Government, was duly sworn by the Clerk and testified on his oath as follows:

DIRECT EXAMINATIN BY MR. HUGHES:

Q. Would you tell us your name please for the record?

A. Wayne Parker.

Q. Where do you reside, Mr. Parker?

A. 32 South Main Street, Brattleboro, Vermont.

Q. What is your present occupation?

A. I am a watchman for Cersosimo's Lumber Company.

Q. How far did you go in school, Mr. Parker?

A. Eighth grade.

Q. Drawing your attention to the morning of Sepember 20, 1975, did you have occasion to meet two individuals in Brattleboro?

A. Yes, I did.

Q. Were these two people you knew before?

A. No.

Q. How did you happen to meet these two people?

A. I was standing down at the corner of South Main and Canal Streets.

Q. And what happened?

A. Two individuals drove up in a blue car with a white roof.

Q. Do you know the registration on that car?

A. I, yes, 241 NYZ.

Q. What State?

A. New York.

Q. How do you know that was a proper number?

A. I memorized that later on in the day.

Q. Are you sure it was New York State license plate?

MR. MURPHY: Objection, Your Honor.

THE COURT: We'll allow the question.

Q. Are you sure that was a New York State license plate?

A. Yes.

Q. What if anything, was said?

A. (No response).

Q. First of all, who was in the car? Was there anybody in the car?

A. At the time they stopped on Canal Street?

Q. Yes.

A. Yes, two men.

Q. What if anything, was said?

A. Yes, there was.

Q. What was said?

A. The passenger on the right-hand side asked me if there were any sporting goods stores in town and I said, "yes".

Q. Now is that passenger that you are talking about in the court room today?

A. Yes, he is.

Q. And would you point him out to me, please?

A. It is the gentleman over there in the blue suit.

Q. Did he state who he was?

A. No, he didn't.

Q. Now, what did he ask you, if anything?

A. He asked me about first of all, some sporting goods

stores and about fire arms.

Q. What did he ask you about sporting goods stores?

A. He wanted to know what the gun laws was on purchasing fire arms at sporting goods stores.

Q. What did you tell him about the laws as you knew them?

A. I told him I didn't know too much about the laws because I had never owned any guns and had never purchased any.

Q. What did he ask about the sporting goods stores, if anything?

A. (no response)

Q. Did he ask you if you knew where any of them were?

A. I said yes, there's 3 or 4.

Q. What did he want you to do, if anything?

A. Purchase some fire arms.

Q. What arrangements if any, did you make with this fellow about purchasing fire arms?

A. He offered to pay a fee if I could help him get some.

Q. How much?

A. Two dollars a piece.

Q. Were you standing outside the car when he said this?

A. There, yes.

Q. What did you say, what was your response to that?

A. I said, "Well, I can't get them, probably my brother can."

Q. You explained to him why you can't get them?

A. Yes, because I didn't have a Vermont driver's license

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or anything that you could use for identification.

Q. What did he say -

THE COURT: I think if you would hold the microphone a little bit farther away from your voice, Mr. Parker, then we wouldn't get the ring.

A. Okay, sir.

THE COURT: It's good to hear you speak out but I think your voice is a little bit, -

MR. HUGHES: Would you read him the last question please?

(REPORTER READ LAST TWO QUESTIONS AND ANSWERS)

Q. Did you, - you've stated that you told him that your brother could help him, is that correct?

A. Yes.

Q. What did he say to that?

A. He wanted to know where he lived.

Q. What did you tell him?

A. I told him on Frost Street, but they, BOBBY and the other guy didn't know the town.

Q. Who is BOBBY?

A. The gentleman I identified a minute ago in the blue suit.

Q. You know him as BOBBY?

A. That's all.

Q. How did you know he was BOBBY?

A. Because later on that day I see a tattoo on his left arm, with "BOBBY" through a heart.

Q. Up to this time did the other fellow say anything?

A. Not a word.

Q. What did you do next?

A. We left Canal Street and drove over to 66 Frost Street.

Q. Who drove?

A. The driver.

Q. Did you go with them?

A. Yes, I did.

Q. Where were you - where were you located in the car?

A. In the back seat.

Q. What happened, if anything, when you got to Canal Street?

A. You mean, Frost Street.

Q. Frost Street, excuse me.

A. I told him I would have to go up and wake him up because he is a taxi driver and worked the night before.

Q. By "him" you mean, your brother?

A. Yes, CLARENCE.

Q. What did you do then?

A. I got out of the car on Frost Street and went up to CLARENCE's, my brother's and woke him up.

Q. What were these two people doing when you left, anything?

A. They were standing outside the car.

Q. Okay, what if anything happened when you went in to see your brother?

A. (No response)

Q. Did you have a conversation with your brother?

A. Yes, I woke him up and said there was two men

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downstairs that wanted to buy fire arms.

Q. What did he say?

A. He said, "I'll be down in a minute."

Q. What did you do then?

A. I waited for him right there in the house.

Q. Did there come a time when he did go outside?

A. Yes, we both went down together.

Q. What happened then?

A. CLARENCE started talking to BOBBY about buying some guns.

Q. Did you overhear any of this conversation?

A. Yes.

Q. What did you overhear?

A. He asked if CLARENCE was a cop and he said, "no."

Q. Who said, -- CLARENCE said "no"?

A. Right.

Q. Did the other fellow say anything at this time?

A. No.

Q. Was anything further said between your brother and this fellow named BOBBY?

A. Yes, CLARENCE said, "How much are you going to give me if I get you some?"

Q. What was the response to that?

A. BOBBY said two dollars a piece.

Q. What did CLARENCE say?

A. CLARENCE said, "No, it won't be enough."

Q. Were you saying anything during this time?

A. No, I wasn't.
Q. Was an agreement ever reached?
A. Yes.
Q. What was that agreement?
A. Ten dollars a piece.
Q. What do you mean by "a piece"?
A. CLARENCE and me,
Q. Ten dollars for you and ten dollars for CLARENCE?
A. Yes.
Q. What were you supposed to do for this ten dollars?
A. Help him purchase fire arms.
Q. What did you do next?
A. We left Frost Street and drove over to Sam's Army and Navy on the hill, it's on Main Street.
Q. When you say "we" who do you mean?
A. CLARENCE, BOBBY and the driver.
Q. CLARENCE, BOBBY and the driver and yourself, is that correct?
A. Right, and me.
Q. You drove to Main Street, is that correct?
A. That's correct.
Q. Where abouts on Main Street did you drive to?
A. Right across from Sam's Army and Navy Store.
Q. What did you do next?
A. Parked the car.
Q. The fellow driving, parked the car?
A. Correct.
Q. What didyou do next?

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A. We all got out of the car.
Q. What happened then?
A. BOBBY and CLARENCE went over to Sam's Army and Navy Store.
Q. What did the driver do?
A. The driver and me went up to BAKER's Book Store
Q. Okay, so you and the driver went to BAKER's Book Store, what did you and the driver do at Baker's?
A. Bought cigarettes.
Q. You say your brother and BOBBY went to, where?
A. Sam's Army and Navy Store.
Q. Were you observing them at all times?
A. Not when they were in there.
Q. Did you see them go in?
A. Yes.
Q. Did you ever go in there?
A. NO.
Q. Did other, the other fellow go in there at that time?
A. No, not at that time.
Q. Okay, did you see your brother and BOBBY come out?
A. No.
Q. You didn't see them come out?
A. No.
Q. When was the next time you saw them?
A. When they approached us up by BAKER's Book Store.
Q. Okay, what happened?
A. Then we, then they went to CLAPP's Sporting Goods

Store.

Q. What was said at Baker's, if anything?

A. Nothing.

Q. You mean just the two, BOBBY and your brother just came out?

A. They said nothing there, there was nothing there that they wanted.

Q. Was anything more said?

A. No, then they proceeded up to CLAPP's.

Q. Who is "they"?

A. CLARENCE and BOBBY.

Q. How about the driver, where was he?

A. And the driver.

Q. The driver went also?

A. Correct.

Q. Where were you?

A. I was still standing at that time at Baker's Book Store.

Q. Why did you stay?

A. Because I had no reason to go up.

Q. How far away is this, you said you went to CLAPP's next?

A. Correct.

Q. How far away is that from Sam's?

A. Probably about 20 steps.

Q. How far away is that from Baker's?

A. Baker's.

Q. Is that where you were, at Baker's?

A. Baker's.

Q. How far away is that from Baker's?

A. (No response).

Q. Is that on the same side of the street?

A. Same side.

Q. A block, two blocks, how far is it?

A. About two blocks.

Q. Did you watch them, the three people, at all times?

A. For a few minutes.

Q. Did you see them go in?

A. Yes.

Q. Did the three of them go in?

A. Yes.

Q. Did you ever go in?

A. No.

Q. Did you ever see them leave?

A. Yes.

Q. And what did you see when they left?

A. When they left, CLARENCE, BOBBY and the driver came out and BOBBY was carrying a brown paper bag.

Q. Was CLARENCE carrying anything?

A. No.

Q. How about the other fellow?

A. No.

Q. This is, how long were they in there?

A. Oh, probably 20 minutes.

Q. YOu say you saw the 3 of them come out?

A. Yes.

Q. And BOBBY was carrying a paper bag?
A. Yes.
Q. What if anything happened after that?
A. I don't know, I went up to the coffee shop.
Q. YOu saw them come out and saw someone with a paper bag?
A. Yes, correct.
Q. Did you see anything else?
A. Yes, stopped about five minutes.
Q. Where did they stop?
A. Outside of Clapp's.
Q. What did they do after that?
A. Then BOBBY And CLARENCE and the driver crossed the street.
Q. Did they walk directly across the street from Clapp's?
A. Pretty much so.
Q. Okay, was BOBBY still carrying the bag?
A. Yes.
Q. He was?
A. (Nodded)
Q. Okay, now when they crossed the street, what if anything, did you see? Did you see them cross the street?
A. Yes.
Q. What did they do after they crossed the street?
A. Stopped by GALANES for about five minutes.
Q. The three of them?
A. Yes.
Q. What were you doing at this time?

A. When they stopped by GALANES, Bobby, Clarence and the driver and I went up to the, finished my way up to the coffee shop.

Q. You did. Now I want to go back a little bit, you say that BOBBY came out with a bag, is that correct?

A. Yes, he did.

MR. MURPHY: Objection, Your Honor.

THE COURT: We will sustain the objection.

Q. Did you ever see that bag change hands?

A. No.

Q. You didn't? Okay. Now, you saw them cross the street, they stopped for five minutes, what happened then?

A. In front of GALANES?

Q. That's right.

A. Then they went inside.

Q. The 3 of them?

Q. Did you see the 3 of them go in?

A. Yes.

Q. Were you watching GALANES for a while?

A. No, I went up to the coffee shop.

Q. You did? Did you ever see them leave the GALANES?

A. No.

Q. When was the next time you saw the 3 people?

A. When I come back from getting coffee.

Q. How long were you there?

A. Twenty minutes, roughly.

Q. Where did you see these people?

A. When I come back?
Q. Yes, when you came back from getting the coffee, where did you next see these people, if you did?
A. They were down across from Sam's Army and Navy .
Q. Okay, what did you observe, if anything?
A. Well, I walked down to the car then besides CLARENCE.
Q. Can, how far away was this from GALANES?
A. A block and a half or two blocks.
Q. How far away from where you were having your coffee?
A. Good four blocks.
Q. Okay , so the next time you saw them was in front of the car, is that correct?
A. Yes.
Q. What did you see?
A. BOBBY and the driver was setting inside.
Q. Inside what?
A. The car.
Q. Who was sitting where?
A. BOBBY was sitting on the passenger's side.
Q. Okay and the driver was sitting in the driver's seat?
A. Correct.
Q. Where was your brother?
A. Standing outside.
Q. What did you observe, if anything?
A. The only thing I observed, they probably had the guns.
Q. You observed them having the guns, did you say?
A. I had an idea that they had.

MR. MURPHY: Objection, Your Honor.

Q. No, no, that's not the question. That's not the question I asked him.

THE COURT: The objection is sustained.

Q. What did you observe at the car, if anything?

A. BOBBY was writing on a paper napkin.

Q. What was he writing?

A. Phone number.

Q. How do you know it was a phone number?

A. Because I stood there and watched him write it down.

Q. What happened after that?

A. Then they asked me for directions to get to the interstate.

Q. Was anything - did you give them directions?

A. Yes, I did.

Q. Which way did they want to go?

A. They wanted to know how to get on the interstate so I told them to go up two sets of lights and take a left and go up over the hill and follow it until they come to it.

Q. When you were standing outside the car, you observed the phone number being written, did you overhear any conversations?

A. No.

Q. Okay, did you ever receive any money?

A. Yes, I did.

Q. How much?

A. Ten dollars.
Q. When did you receive this?
A. When CLARENCE and me were walking towards his house.
Q. Did CLARENCE give you the money?
A. Yes, he did.
Q. Now, during this time period, did you ever talk to the driver?
A. Just once up by Baker's Book Store.
Q. What did he have to say, if anything?
A. Nothing. Talked about work.
Q. Work, where?
A. New York.
Q. New York?
A. Yah.
Q. What did he say about that?
A. I asked him what they paid down there and he said probably about the same they pay up here and it was dropped.
Q. Anything further said?
A. No.
Q. Anything, any other talk about New York?
A. None.
Q. What happened after he received the ten dollars, if anything?
A. Who? We received the ten dollars?
Q. After you received the ten dollars, did anything further happen in this transaction?

A. No.

Q. I am going to ask you a question, have you made any deals with the Government in this case for or in exchange for your testimony?

A. Yes, I have.

Q. What if anything, is that deal?

A. As long as I tell the truth, I won't be prosecuted.

Q. Now, talking about prosecuted, you knew, didn't you, at some time, what you were doing was wrong?

A. Yes, I did.

Q. Did you know initially?

MR. MURPHY: Objection.

THE COURT: Read the question.

MR. HUGHES: I will withdraw the question.

THE COURT: Very well.

Q. I would like the record to reflect the witness did identify the fellow in the blue suit as BOBBY as he knows him.

THE COURT: The record may so indicate.

MR. HUGHES: I have no further questions, Your Honor.

MR. MURPHY: May I approach the U.S. Attorney?

THE COURT: Yes.

CROSS EXAMINATION BY MR. MURPHY:

Q. Mr. PARKER, I believe you testified that you made a deal with the Government in return for your testimony, is that correct?

A. Correct.

Q. Did they inform you that there would be ten charges pending against you?

A. No.

Q. What did they inform you as to what the punishment was in this matter?

MR. HUGHES: Your Honor, I object, I don't think the punishment is relevant in this matter.

MR. MURPHY: May I be heard, Your Honor?

THE COURT: Yes.

MR. MURPHY: I believe it goes to the question of his credibility as to whether or not he would lie if he knew that he was facing this much time in jail.

THE COURT: We will allow the question.

A. Could you repeat that, sir?

Q. Sir, - all right, I will ask you this question. Sir, were you informed that each one of these charges carried a penalty of five years in jail?

A. Yes.

Q. Now, when did you report this matter to the Government?

A. That same day we reported to the Brattleboro Police.

Q. And at that time were you in a situation where the owner of the sporting goods store had come to you?

A. Yes.

Q. Did he tell you that he was going to report you to the F.B.I.?

A. Yes, because there was something like a five day waiting period.

Q. So that prior to going to the Police Department with your story, you had been informed by the owner that you were being reported to the Federal Bureau of Investigation, is that correct?

A. Yes.

Q. At that time you then had a discussion with an F.B.I. Agent or an agent of the Alcohol, Tax and Fire ARms Commission, is that correct?

A. Yes.

Q. When was that, sir?

A. That was some time after we reported to the police. (sic)

Q. Approximately how long afterwards?

A. Oh, a couple of months.

Q. During that three months period, did you and your brother discuss your testimony in this case?

A. Not with each other, no.

Q. For two months neither you nor your brother discussed what had happened here with each other?

A. Yes.

Q. By the way, where do you live in relation to your brother, sir?

A. He lives on one end of the town and I live on the other.

Q. Did you see him during this two months period?

A. Yes.

Q. Approximately how often did you see your brother?

A. Couple of times a week.

Q. During this period, you had previously been told what the

punishment you were possibly facing was, is that correct?

A. NO.

Q. What did the police officers tell you when you reported it to them?

A. He said he would have to contact the ATF people.

Q. Now after there came a time when the ATF people came to you, is that correct?

A. Yes.

Q. Prior to that time had you or your brother, discussed this matter?

A. Yes.

Q. Well that was during that two months period, isn't that correct, sir?

A. Yes.

Q. Oh, how often did you discuss the matter during this period?

A. Oh, every once a week, maybe.

Q. Well, when you discussed it, where did you discuss the matter?

A. Either at his house or mine, if he come up.

Q. When you reported it to the police, did they at any time tell you that you were facing criminal prosecution?

A. He said that there was something wrong but he wasn't sure.

Q. However, during that two month period you and your brother discussed what happened, approximately once a week?

A. No, not all the time.

Q. Well sir, how many times did you discuss it?

A. Oh, probably once a week or so.

Q. Now, let me ask you this sir, on September 20, 1975, do you remember what day of the week that was?

A. I believe it was on a Saturday morning.

Q. Are you employed, sir?

A. Yes, I am.

Q. Were you employed at that time?

A. Yes.

Q. And where were you working?

A. Cersosimo's Lumber Company.

Q. All right, do you work on Saturdays?

A. Not as a rule.

Q. Were you working on that Saturday?

A. No.

Q. All right, approximately what time did you see the person that you now identify as the defendant?

A. Around 8:30, quarter of 9:00.

Q. Well, where were you at that time?

A. Standing at the bottom of South Main and Canal Streets.

Q. And how long had you been there?

A. Probably ten minutes.

Q. You were outside I believe in the air, is that correct?

A. Yes, waiting for the store to open.

Q. Do you know what time the store opens, sir?

A. Usually opens at 8:30 but this morning he was late.

Q. Well, how many other people were outside the store at that time?
A. No one.
Q. How many other people were on the street at that point?
A. No one, just cars passing.
Q. So that by the way, is this on a main street in Brattleboro?
A. It goes right down into Main Street, yes.
Q. And at ten minutes to nine in the morning, nobody else but you was on the street?
A. Correct.
Q. All right, by the way, what were you wearing?
A. Grey work clothes.
Q. Do you have on a jacket?
A. I believe I had a light blue one on.
Q. So that you had on a grey work outfit and a light blue jacket, is that correct?
A. Correct.
Q. When the defendant approached you, were you standing outside the store?
A. Yes.
Q. Did either one of them get out of the car?
A. No.
Q. Who talked to you, if anyone?
A. The passenger on the right side.
Q. Is that the person?
A. That's BOBBY.
Q. Is the defendant?

A. Correct.
Q. By the way, what were the weather conditions?
A. A little cool but not too bad.
Q. You say "a little cool," was it 30 degrees, 40 degrees?
A. About 40.
Q. Now did he at any time get out of the car while you were standing outside this store?
A. No.
Q. All right, what kind of a car was it, sir, do you remember?
A. A blue one, white roof and I think it was a Pontiac Grand Prix.
Q. And was it a convertible or a hard top?
A. I believe it was a hard top.
Q. Are you positive of that?
A. No.
Q. You are not positive as to whether or not it was a convertible or a hard top, but you remember the license plate, is that correct?
A. That's correct.
Q. Now, you were on the sidewalk, is that correct?
A. Yes.
Q. Were there any cars parked outside of the store?
A. No.
Q. Were there any other parked cars on the street up from the store?
A. Probably 2 or 3, if I remember there is an apartment house right there.


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Q. This store by the way, usually opens at 8:30 in the morning?

A. Correct.

Q. By the way, what do they sell at the store?

A. Usually milk, cigarettes, beer.

Q. There was nobody else waiting outside the store with you?

A. NO.

Q. Now, when they pulled up in the car, did they pull up to the curb?

A. Yes.

Q. So that at that point you were on the curb and their car was next to the curb, is that correct?

A. Correct.

Q. They pulled up in front of you, or behind you?

A. Right up the side, beside me.

Q. Right up alongside of you?

A. In front of me.

Q. In front of you?

A. Correct.

Q. Now, did you see them pull up?

A. Yes.

Q. What direction were they coming from?

A. The south.

Q. All right. When they pulled up they went past you?

A. They just pulled up, stopped and I thought they might want directions.

Q. But they went past you, is that correct?

A. No, they just pulled up and stopped.

Q. Well sir, what I am asking you is this, did the car pass where you were standing prior to its stopping, or did it stop in front of where you were standing, or directly alongside of where you were standing?

A. Stopped directly in front of where I was standing.

Q. Now at that point, did you go over to the vehicle?

A. No.

Q. Did somebody call out to you out of the vehicle?

A. BOBBY, the passenger on the right-hand side rolled down the window.

Q. The window was rolled up at this point?

A. Correct.

Q. What did he say to you?

A. He asked me if there was any sporting goods stores in town.

Q. By the way, how long have you lived in Brattleboro?

A. Five years.

Q. Now, at this point, did you walk over to the car?

A. Yes.

Q. So that you are standing outside of the car at this point, is that correct?

A. Correct.

Q. Did you bend down and lean into the car?

A. Yes.

Q. All right, did they at any point, get out of the car?

A. No.

Q. All right now, did you have a discussion with the person who

was driving the car?

A. No.

Q. By the way, BOBBY asked you if there were any sporting goods stores, what was your answer to that?

A. I said, "yes".

Q. Did you tell them where they were located?

A. I told them there was one on Main Street.

Q. Well, have you ever been in any of these sporting goods stores before?

A. Once in a while, buying cigarettes, fishing poles.

Q. By the way, where do you live in relation to these sporting goods stores?

A. I live on half way across what they call South Main Street Hill and the sporting goods stores are headed up on Main Street.

Q. Approximately how far away from your house is that?

A. Oh, 10 or 20 minutes walk.

Q. You have previously been in there buying fishing poles, is that correct?

A. Correct.

Q. Which one of these sporting goods stores had you bought fishing poles at?

A. CLAPP's.

Q. Had you ever been into any of the other sporting goods stores?

A. I go in the Sam's Army and Navy and buy work gloves.

Q. All right now, what was the discussion that Mr. GALANES

allegedly had with you on that day?

A. You mean that morning?

Q. That morning.

A. When they pulled up and stopped and asked me about the sporting goods stores.

Q. And you told them there were sporting goods stores in town?

A. Yes, I did.

Q. Did you tell them how many sporting goods stores there were?

A. Three or four.

Q. Did you tell them where they were located?

A. I told him up on Main Street.

Q. Did you give directions, did he ask for directions?

A. I started giving him directions, yes.

Q. Now, at that point, is that when he propositioned you?

A. Sort of.

Q. By the way, you never asked anyone whether or not you could buy guns for them, did you?

A. No.

Q. You never had any conversation with Mr. SORIENTI out on the street in which you told them that you would get them guns, did you?

A. Could you repeat that, sir?

(LAST QUESTION READ BY THE REPORTER)

A. Not at that time.

Q. Well sir, we are talking about the time that you are

standing outside the store and they allegedly pulled up next to you. Now, did you have a conversation with Mr. SORIENTI outside on the street in which you told him that you would buy guns for him?

A. Yes.

Q. Did you testify on direct examination sir, that you never had any conversation with Mr. SORIENTI?

A. No, SORIENTI, no.

Q. Did you testify on direct examination that they never got out of the car at that point?

A. Not there on Canal Street, no.

Q. Sir, isn't it a fact that he never had a conversation with you, that he never asked you anything about guns, that you propositioned Mr. SORIENTI and told him that would get him the guns?

A. No, that's not true.

Q. Do you understand you are under oath?

A. Yes.

Q. Did you just testify that you told Mr. SORIENTI that you would get him guns? Yes or no?

A. Yes.

Q. Did you know that it was illegal to buy guns for someone who lives out of the State?

A. Not at that time, I didn't.

Q. Well sir, if you didn't know that it was illegal, why did you have to go get your brother?

A. Because I always heard people talking that you had to

have some kind of an I.D. to purchase them.

Q. Are you telling this jury that you didn't know you were doing anything wrong that you thought you were just an innocent bystander helping someone out?

A. Is that a question?

Q. Never mind. Well sir, why did you think you needed a driver's license or some identification from Vermont to buy a gun?

A. Because that is why I have heard most people say if you buy guns you have to have some kind of an I.D. or something.

Q. Is there some sort of an I.D. you must have?

A. Correct, sir.

Q. Well, did you think that the person who stopped you and allegedly asked you these questions, didn't you think that he had a driver's license?

A. I don't know.

Q. Let me, - you won't, - you wouldn't come in here and lie to stay out of jail, would you?

A. No, I wouldn't.

Q. You would rather go to jail for fifty years rather than lie, is that what you are telling us?

MR. HUGHES: Your Honor, I object to that.

THE COURT: Yes, that's an unfair question.

Q. Now, you testified that Mr. GIALLANZO was the person who is sitting in the driver's seat of the car, is that correct?

A. No, he wasn't sitting in the driver's seat.

Q. What were the two people wearing?

A. The two from New York?

Q. Yah.

A. If I remember right, BOBBY was wearing dungarees and a T-shirt.

Q. T-shirt?

A. I believe it was.

Q. Did he have a jacket on?

A. No.

Q. Was 40 degrees out, is that correct?

A. That's correct.

Q. Do you, did you at any time, go into any of the sporting goods stores, sir?

A. As I said I had been in from time to time to buy gloves in Sam's Army and Navy or cigarettes or fishing equipment.

Q. On this date did you go in to either one of the stores?

A. No.

Q. Then you took them back to your brother's house, all right, did either one of these two persons who were with you go into your brother's house?

A. No.

Q. You went in and brought your brother out, is that correct?

A. That's correct.

Q. And how long did they remain outside your brother's house?

A. Ten minutes, probably.

Q. When you and your brother came out you went directly back to town, is that correct?

A. No, they stopped off for about five minutes outside before we got in the car.

Q. Well sir, these two people were going to pay ten tollars to you and your brother for them, for you to buy guns for them, is that what you are telling us?

A. Well, it wasn't at that time.

Q. Well, when was the agreement reached to pay ten dollars a piece for the purchase of weapons?

A. Just before we left my, - CLARENCE's apartment.

Q. Before you left CLARENCE's apartment? By the way, when you went up to CLARENCE's apartment, what did you discuss with CLARENCE?

A. I told him there was two men downstairs who wanted to buy some guns for target practice.

Q. Well, how old are you, sir?

A. 29.

Q. You used the word "men" is that correct?

A. Men.

Q. Was your brother dressed at that point?

A. No, he wasn't.

Q. He got out of bed at that point and got dressed, is that correct?

A. That's correct.

Q. By the way, when these people stopped you on the street, did they tell you that they would give you any money

if you purchased the guns for them?

A. Yes.

Q. How much money did they tell you they would give you?

A. They didn't, they said probably two dollars.

Q. Two dollars. It is your testimony that for two dollars you went home, you drove with them to your brother's house and got your brother out of bed to come down and meet them?

A. That's true.

Q. Did you tell your brother when you went up to the house that they were willing to pay two dollars?

A. Yes and he said he would have to get more.

Q. By the way you and your brother had never done this before, had you?

A. No.

Q. But yet your brother said he would have to get more money to do it, is that correct?

A. That's correct.

Q. And you went directly to your brother's house after these people allegedly asked you to purchase guns for them, is that correct?

A. That's correct.

Q. And when you arrived at your brother's house you told them that there's two men downstairs who want to buy guns?

A. That's correct.

Q. At that point, it is your testimony that your brother got up for the two dollars and said that he wanted more

money and went down stairs, is that correct?

A. That's correct.

Q. By the way your brother never purchased guns before either, is that correct?

A. That's correct.

Q. Now, when you went back to town you never went into any of these sporting goods stores, is that correct?

A. That's correct.

Q. Well, you didn't know that there was anything wrong with this, did you?

A. Not at that time, no.

Q. However, you didn't go in with any of the people when they went into the sporting goods stores?

A. That's true.

Q. By the way, where did you go?

A. I went up to get me a cup of coffee at the Dunkin Donuts.

Q. By the way, when you were going to the store when these people pulled up next to you, what were you going into the store for?

A. Get some cigarettes.

Q. Did you ever go into the store?

A. No.

Q. Did the store open up while you were there?

A. No.

Q. After they went in to the sporting goods store, you went up to Dunkin Donuts to get coffee?

A. That was after they had been in Clapp's.
Q. Did you ever go into any other stores in between?
A. No.
Q. Well sir, how long were you waiting outside the first store?
A. Ten to twenty minutes.
Q. So that to get a pack of cigarettes, you waited twenty minutes outside of a store that was closed and then subsequent to that you never went to get cigarettes and you took a ride over to your brother's house with two complete strangers for two dollars to split between you and your brother?
A. That's correct.
Q. Well, I guess you didn't want cigarettes any more, huh?
A. (No response).
Q. Never mind, strike that, I have no more questions.

REDIRECT EXAMINATION BY MR. HUGHES:

Q. Mr. PARKER, so we can clear that last statement up, did you ever buy any cigarettes that day?
A. Yes.
Q. When did you buy them?
A. I bought a pack of Marlboro at Baker's Book Store.
Q. Isn't that about as quick as you could get them on Main Street?
A. About as soon as you can get them, yes.
Q. Now, let's back up a little bit, why do you remember the license plates?

A. Well -

MR. MURPHY Objection.

THE COURT: Objection over-ruled.

Q. did you remember the license plate?

A. Yes.

Q. Okay, now did you make a statement to the police right after this event?

A. Yes.

Q. Is that a full and complete statement?

A. Yes.

Q. Was any deal made at that time?

A. No deal.

Q. Okay now, you talked to Mr. REILLY at some time, is that correct?

A. I have.

Q. Did you make a statement to him?

A. Yes.

Q. Was the deal made at that time?

A. No.

Q. Isn't it correct that a deal wasn't made until you testified?

MR. MURPHY: Objection, Your Honor.

THE COURT: Objection over-ruled.

A. Repeat that?

Q. I withdraw that and I would like to rephrase it. Isn't it a fact that a deal was made much later?

A. Yes.

Q. Okay now, the driver's license, it is a Vermont driver's

license they need isn't it?

MR.MURPHY: Objection, Your Honor, I'm going to object to leading questions.

THE COURT: We will sustain the objection.

Q. Did you talk to Mr. SORIENTI about guns in front of the store?

A. Yes.

Q. In front of the first store youwere at?

MR. MURPHY: Objection Your Honor, it is asking an answer.

THE COURT: Objection over-ruled.

Q. I am talking about the store you were waiting to buy the cigarettes.

A. On the corner market.

Q. Did you talk to him about guns there?

A. Yes.

Q. You did? Okay, did you ever talk to him about it later?

A. After we left there.

Q. You talked about it later. I have no further questions.

MR. MURPHY: I have a few more.

THE COURT: Certainly.

RECROSS EXAMINATION BY MR. MURPHY:

Q. Mr. PARKER, is it your testimony that you remembered the license plate of the car, is that correct?

A. Yes, that is when I was standing in front of Baker's Book Store I was trying to make up my mind whether to wait for them to open up or go up and get coffee, then

they opene[illegible] so I went in and got my cigarettes there whi[illegible] I was waiting. I looked down to the car, I don't know, being a watchman, I have to have registration numbers because we have trouble down there from time to time, if I call the police that is the first thing they ask me, is for the registration number, if I haven't got it, there's not too much help they can give me.

Q. By the way, what color was the license plate?

A. I believe it was orange with black letters.

Q. Was it on the front of the car or on the back of the car?

A. On the front.

Q. You have - you are saying that the New York State license plate is on the front of the car and not the back?

A. (No response).

Q. Is that your testimony?

A. No.

Q. While you were waiting outside of the store that you claim now that you went into to buy your cigarettes, what was the name of that store?

A. Baker's Book Store.

Q. What time was it while you were waiting outside Baker's Book Store?

A. Roughly, I didn't have a watch, but it must have been around 9:00 o'clock.

Q. How far away, - what's the name of the first store that you were waiting outside?

A. Sam's Army and Navy.

Q. No, what's the name of the store that you were waiting outside of when you allegedly met the defendant, the person you claim to be the defendant?

A. The Corner Market.

Q. Where is that located in relation to Baker's Book Store?

A. That is up on the other end of town, sort of like.

Q. About how far away from Baker's Book Store?

A. It would take you about ten minutes walking.

Q. How long does it take you to drive it?

A. Couple of minutes.

Q. How long does it take to get from the Corner Market to your brother's house?

A. About 25 minutes.

Q. How long did it take your brother to get dressed?

A. About five.

Q. About five minutes?

A. Five, ten minutes.

Q. Was he sleeping when you went in?

A. Yes, he was.

Q. So you woke him up, is that correct?

A. Yes.

Q. By the way, is your brother married?

A. No.

Q. Was he the only one in his apartment when you went in?

A. No.

Q. Who else was there?

MR. HUGHES: Your Honor, I believe that I object to that. I believe this is outside of the scope of my examination. I think we are beating a dead horse here.

THE COURT: Well it does exceed the limits of your direct-examination but we will allow it.

Q. Who else was there?

A. His girlfriend and somebody else, I don't know.

Q. By the way, they must have heard this conversation you had with your brother, is that correct?

A. No, because we were in the bed room and they were out in the kitchen.

Q. Now, how long did it take for you and your brother to get back to Sam's Army and Navy Store?

A. Probably 20-30 minutes after he got dressed and went downstairs.

Q. Now, what time does Baker's open at?

A. Around 9:00.

Q. Well, sir, you must have been waiting outside Baker's after 10:00 o'clock for it to open then?

A. (No response).

MR. MURPHY: I have no further questions.

MR. HUGHES: Your Honor, I think that I should straighten out that last comment for whatever worth it was.

THE COURT: Yes, there is no necessity for any additional sidelines, Mr. Murphy.

BY MR. MURPHY:

Q. What time did you get to Baker's at?

A. Do you want to rephrase that?

MR. MURPHY: Would you read it back to him, please?

REPORTER: What time did you get to Baker's at?

A. Around ten minutes to 9:00.

Q. What time did the people pull up outside the Corner Market?

A. It was around 8:30.

Q. Do you remember testifying minutes ago that you were waiting there at ten minutes to 9:00 when they pulled up?

A. I was down there probably a little earlier than that.

Q. Well sir, did you just testify ten minutes ago that Baker's usually opens at 8:30 but this morning they didn't open and that you were waiting outside there at ten minutes to 9:00 for Baker's to open up when allegedly he pulled up with somebody else in the car?

A. I was in the Corner Market waiting for him to open up at 8:30-

Q. And you were waiting at the Corner Market until ten minutes to 10:00, is that correct?

A. Pretty close.

Q. And then at ten minutes to 9:00 they approached you, you left there, went to your brother's house which took you 25 minutes, took you ten minutes to get your brother up, you talked outside for five minutes, took you a half hour to get back to Baker's and you are at Baker's at ten minutes to 9:00 is that your testimony?

A. Probably off on the time.

Q. Do you know what perjury is?

A. No, I don't.

MR. HUGHES: Objection, Your Honor.

THE COURT: The objection is sustained.

Q. I have no further questions, Judge.

REDIRECT EXAMINATION BY MR. HUGHES:

Q. Did you have a watch on?

A. No, I didn't.

Q. Were you confused about the time?

A. Yes.

MR. MURPHY: I am going to object.

THE COURT: Objection is over-ruled. We'll allow the witness to answer.

MR. HUGHES: I have no further questions, Your Honor.

MR. MURPHY: I have no further questions.

THE COURT: That is all, Mr. Parker, I believe you may step down.

(The witness, having been excused, withdrew from the stand)

C-L-A-R-E-N-C-E R. P-A-R-K-E-R, having been called as a witness by the Government, was duly sworn by the Clerk and testified on his oath as follows:

DIRECT EXAMINATION BY MR. NEIDERMEIER:

Q. Sir, for the record, would you please again state your name?

A. Clarence R. PARKER.

Q. And where do you live, Mr. Parker?

A. Brattleboro.

Q. Is that in Vermont?

A. Yes.

Q. And how long have you live there?

A. Approximately two years.

Q. Do you have a brother named WAYNE?

A. Yes, I do.

Q. How far have you gone in school, Mr. Parker?

A. Ninth grade.

Q. Now, I'd like to direct your attention to September 20, 1975, do you have occasion, or did you on that morning go see your brother, WAYNE?

A. Yes, I did.

Q. All right and approximately what time did you see him?

A. Around 9:00 o'clock.

Q. Where did you see him?

A. At my home.

Q. Did you have a conversation with your brother?

A. Just a slight one.

Q. What was s id?

A. He came up and woke me up and then he told me that it was two guys downstairs that wanted to buy some guns.

Q. Did he tell you anything else?

A. That they were willing to pay for it.

Q. Did he tell you how much?

A. No.

Q. As a result of that conversation, what did you do?

A. I got dressed and went downstairs.

Q. Did you see anyone else when you got downstairs?

A. Yes, BOBBY and GEORGE.

Q. Did you see BOBBY in the court room today?

A. Yes, I do.

Q. Please identify him and indicate what he is wearing and where he is sitting.

A. He is sitting to the right, wearing a blue suit and has a moustache on.

MR. MURPHY: We will stipulate he has identified him.

THE COURT: Very well, proceed.

Q. Now, Mr. Parker, when you got down there did anyone say anything to you?

A. Yes, BOBBY did.

Q. What did BOBBY say to you?

A. Well, he was talking for a few seconds and then offered Two dollars to go buy some guns and I said no.

Q. He offered you two dollars to go buy some guns?

A. That's correct.

Q. What happened then?

A. Then I said no and he said well, I'll give you ten.

Q. Ten dollars?

A. Yes.

Q. What did you say?

A. I said, okay.

Q. Then, what happened?

A. We left my home in their car and went down, parked on the right side of Main Street.

Q. Who was in the car?

A. Bobby, George, my brother and myself.

Q. This is after you had already agreed to buy them guns for ten dollars?

A. Yes.

Q. What did you do after you parked the car?

A. We all got out of the car, Bobby and I went to Sam's s Army & Navy Store, or sporting goods store.

Q. Just you and Bobby?

A. Yes.

Q. What did you do when you got there?

A. We went to the sporting goods and Sam's, and went down stairs to where the guns were.

Q. What was Bobby doing when you got downstairs?

A. He looked over a .38 and said he would be back with more money later.

Q. Did he have any conversation with the clerk?

A. Yes, he did.

Q. What was that conversation?

A. He was, he specified that he was looking for a .38 air weight revolver.

Q. Clerk say anything?

A. He just asked him what he wanted it for.

Q. What did Bobby say?

A. He said target practice.

Q. Clerk have any reaction to that?

A. He -

MR. MURPHY: Objection.

THE COURT: Objection over-ruled.

A. He kind of "squingled" to think about target practice with an air weight.

Q What happened after that?

A. We left there, went to Clapp's sporting goods store on Main STreet, there he spotted the Derringer that he liked.

Q. Now who went to the store?

A. Bobby and myself.

Q. Where did you go, where did he go when he entered the store?

A. We went down to the case where the revolvers are kept.

Q. What did Bobby do when he got there?

A. He looked in and he saw a Derringer that he thought, you know, his friend would like.

Q. Did he say anything?

A. Yes, he said that he would be back with the money.

Q. Who did he say this to?

A. The clerk.

Q. Where did you go then?

A. We left there, went down and crossed the street and met George.

Q. What happened when you met George?

A. We then returned to Clapp's sporting goods.

Q. Who returned?

A. Bobby, myself and George.

Q. And what didyou do when you got there?

A. George bought the Derringer and -

Q. All right, what did Bobby do?

A. And Bobby bought a .38.

Q. Was that the same Derringer that George bought that Bobby had seen earlier?

A. Yes, it was.

Q. When you say Bobby, you are referring to the defendant, is that correct?

A. Yes.

Q. How did Bobby select the .38?

MR. MURPHY: Objection to the form of the question.

THE COURT: Yes, we'll sustain the objection to the form.

Q. What did Bobby do in order to select the .38?

MR. MURPHY: Objection, Your Honor, to the form.

THE COURT: We will allow the question.

A. You want me to repeat it?

Q. What did Bobby do in order to select that .38?

A. He asked the clerk if he could have the, to look at the - -

Q. And did he look at it?

A. Yes, he did.

Q. What else did he do with it?

A. He looked it all over thenhe bought it.

Q. You say he looked it all over?

A. Yes.

Q. What actually did he do?

MR. MURPHY: Objection, Your Honor, asks an answer.

THE COURT: We will allow the question.

A. He just basically handled the gun like this, with his hands. Looked it all over, checked the sights, this sort of thing.

Q. Did he put it anywhere?

MR. MURPHY: Objection, Your Honor.

THE COURT: Objection over-ruled, go ahead.

Q. Did he put it anywhere?

A. No.

Q. Who paid for that .38?

A. Bobby did.

Q. Did you sign any forms for the .22 and the .38 that were purchased that day?

A. Yes.

Q. In Clapp's?

A. Yes.

Q. I show you, with the Court's permission may I have these two exhibits marked, I'm sorry I didn't have it done previously.

THE COURT: Yes.

(GOvernment's Exhibit #1, Fire Arms Transactions, marked for identification. Government's Exhibit #2, Fire Arms

Transaction Record,marked for identification).

Q. Mr. Parker, I show you what's been previously marked Government's Exhibit #1 for identification and I ask you if you can identify that and if so, how?

A. Yes, it has my signature on it.

Q. All right, is that the fire arms identification form that you signed in Clapp's store on September 20, 1975?

A. Yes, it is.

Q. And is that the fire arms identification form for the .22 Derringer?

A. Yes, it is.

Q. All right, did you state on that form that you were the buyer of that .22 Derringer?

A. Yes, I did.

Q. Was that true?

A. No. Yes, it was correct.

Q. At the time you signed that, did you actually have possession of that .22 Derringer?

A. After I left the store, yes.

Q. But were you the actual buyer of it?

MR. MURPHY: Objection, Your Honor.

THE COURT: Yes, objection is over-ruled, is sustained to the pending question.

Q. When you stated on this form that you were the buyer, was that true?

A. No, it wasn't.

Q. So you falsified that form, is that correct?

A. Yes, I did.

Q. Why did you falsify that form?

A. For money.

MR. MURPHY: Objection.

THE COURT: Objection over-ruled.

Q. Why did you falsify that form?

A. For the money.

Q. For what mo[illegible]?

A. For the money that Bobby had offered.

Q. For the ten dollars?

A. Yes.

Q. I show you what's been previously marked as Government's Exhibit #2 for identification and ask if you can identify that?

A. Yes, I can.

Q. And how can you so identify it?

A. It has my signature on it.

Q. Is that the fire arms transaction record which you signed at Clapp's sporting goods store on September 20, 1975 for the .38 caliber gun?

A. Yes, it is.

Q. And did you so state on this form that you were the buyer of that gun?

A. Yes, I did.

Q .But was that true?

A. No, it wasn't.

Q. Why did you falsify that form?

A. For the money.

Q. For what money?

A. For the money that Bobby offered, the ten dollars.

Q. In fact, who actually paid for this gun?

A. Bobby did.

Q. Now at this time I move into evidence Government's #1 and #2.

MR. MURPHY: No objections.

THE COURT: Government's #1 and #2 are received.

Q. Now, what happened when you had left Clapp's?

A. Bobby carried the gun back out of the store away from the store, stopped, and that's where I took possession of the bag.

Q. Who had the bag containing the gun up until that time?

A. Bobby did.

Q. And he gave you that bag then?

A. Yes, he did.

Q. Did he say anything to you?

A. Just that it would be better if I carried them.

Q. What happened then?

A. Then we crossed the street, George had mentioned about him, Bobby and George had mentioned about getting another .38 and so we crossed over to GALANES.

Q. Did you enter GALANES?

A. Yes, we did.

Q. Who went in?

A. Bobby, George and myself.

Q. What did Bobby do when you got inside?

A. Bobby, George and I walked over to the counter. They have .38's hanging on the wall right there like a little square and they picked a lower-priced revolver

Q. Who selected it?

A. George and Bobby did, together.

Q. Bobby say anything?

A. Not to my recollection.

Q. What happened after the gun was selected, was anything else selected?

A. Yes.

Q. What else was done?

A. There was a shoulder holster selected.

Q. Who selected that?

A. Bobby did.

Q. Did he try it on?

A. I can't say for sure if he did.

Q. Was anything else purchased?

A. Yes, a box of .38 shells.

Q. Who purchased that?

A. Bobby did.

Q. Who paid for the .38?

A. Bobby did.

Q. Again, the, with the Court's permission I have just one more exhibit to be marked.

THE COURT: Yes.

(Government's Exhibit #3 Fire Arms Transaction Record, marked

for identification).

Q. Did you fill out a similar form in GALANES?

A. Yes.

Q. Store? I show you what's been marked as Government's Exhibit #3 for identification and ask if you can identify it and if so, how?

A. Yes, it has my signature on it.

Q. Is that the fire arms transaction record concerning the purchase of the .38 revolver that you purchased at GALANES?

A. Yes, it is.

Q. And you signed that, didn't you?

A. Yes, I did.

Q. And you stated on it you were the buyer of that gun, isn t that right?

A. Yes.

Q. Was that true?

A. No, it wasn't.

Q. Who put that gun, who bought that gun, who paid for that gun?

A. Bobby did.

Q. Why did you falsify this?

A. For the ten dollars.

Q. Who paid you the ten dollars?

A. Bobby did.

Q. Did there come a time when you left GALANES Sporting Goods Store?

A. Yes, we then left the store after everything was purchased. The three of us, Bobby, George and myself walked to the car.

Q. Who had the guns at this time?

A. I carried them out of GALLANES down to the car.

Q. What happened when you got to the car?

A. George opened the trunk and placed them there.

Q. Who told you to put them in the trunk?

A. If my memory doesn't fail me, Bobby did.

Q. He told ycu to put the guns in the trunk?

A. Yes, he did.

Q. Had you seen that car before?

A. Yes, prior to that I see it at my house.

Q. Was that the same car that you had ridden over to the stores in?

A. Yes.

Q. Did you notice what plates were on that car?

A. Yes, I did.

Q. What plates were on it?

A. New York.

Q. What color are those plates?

A. Orange and black.

Q. Were you paid the ten dollars at that time?

A. Yes, after the trunk was closed, walked up to the side of the car and then we were paid.

Q. Who paid you?

A. Bobby did.

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Q. And what did he pay you with?

A. Two, $10.00 bills.

Q. Was that one for you and one for your brother?

A. Yes, that's correct.

Q. Bobby say anything at this time, after he paid you?

A. Yes, he said at a later date he may want to purchase some more.

Q. Some more what?

A. Guns.

Q. What did you say?

A. I said, no, I don't have the personal phone so I gave him the Yellow Cab's phone number.

Q. Did he give you his phone number?

A. He gave me a phone number on a napkin, yes.

Q. Did he tell you where that was located?

A. Yes, yes, he said that was Queens, New York.

Q. Now when you filled out these fire arms transaction records was your purpose in filling them out to make it seem that you and not Bobby was the buyer of these guns?

MR. MURPHY: Objection, Your Honor.

THE COURT: Objection sustained.

Q. Where did you believe that Bobby was a resident of?

MR. MURPHY: O bjection.

THE COURT: Objection is over-ruled.

A. New York.

Q. Just have onefinal question, Mr. Parker, taking you back to the time when you first saw the defendant, did you show

any identification?

A. Yes, I did.

Q. What did you show him?

A. Fishing license.

Q. Did he say anything when he saw that?

A. He just said, you know, it required the thing, you had to have to buy the guns.

Q. Did he ever ask who you were?

A. Yes.

MR. MURPHY: Objection.

THE COURT: Objection over-ruled, we will let the answer stand.

Q. What did he ask you?

A. Yes.

Q. What did he ask you?

A. You want me to repeat the question?

Q. What did he ask you as to who you were employed by?

A. Yes, I told him I was employed by the Yellow Cab.

Q. Did he say anything else?

A. Nothing that I can remember.

Q. Now at this time I move the admission of Government's Exhibit #3.

MR. MURPHY: No objections.

THE COURT: Government's Exhibit #3 is received. Because of another hearing that is scheduled shortly, the Court will conclude the trial for today and we will resume tomorrow morning at 9:30. Again, I direct you to keep in mind

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the instructions which the Court gave you previously regarding not discussing the case with any person or listen to any person about it and if it should be the subject of any news broadcast or comments in the news media, you are not to listen to that under any circumstances.

Thank you for your attention and attendance today and I ask you to come in tomorrow morning at 9:30.

The Court will instruct you, Mr. Parker, not to discuss this case with your brother or any other person or any other witnesses or any other person.

(THIS TRIAL THEN AT 4:00 P.M., ADJOURNED UNTIL 9:30 A.M., 14 April 1976, AT WHICH TIME IT WAS RECONVENED)

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CLARENCE PARKER - cross - (MURPHY) 9:42 a.m., 4/14/76

THE COURT: Do you have some - I believe Mr. Clarence Parker was on the stand, do you have further questions of Mr. Parker?

MR. NEIDERMEIER: No, Your Honor.

CROSS EXAMINATION BY MR. MURPHY:

Q. Mr. Parker, did you discuss your testimony prior to coming here today with your brother?

A. No, I did not.

Q. Have youever discussed your testimony with your brother?

A. No, I did not.

Q. Would it refresh your recollection if I told you that your brother testified that you discussed your testimony once a week?

A. No.

Q. Have you been promised immunity for testifying here today?

A. Yes, I have.

Q. Was it explained to you that youare facing five years in jail on each one of these ten counts?

MR. NEIDERMEIER: I am going to object, Your Honor, this is improper.

THE COURT: Sustain the objection to the pending question.

Q. What were you told concerning the punishment that you are facing for these crimes?

A. I wasn't, I wasn't told anything about the sentence.

Q. Was your brother present when you went to the federal agent concerning these crimes?

A. Yes, he was.

MR. NEIDERMEIER: Objection, Your Honor, I don't believe there has been testimony to that effect.

THE COURT: We will allow the witness to answer the question.

Q. Were you and your brother in the same room?

A. Yes.

Q. Did you hear the federal agent tell your brother that he is facing five years in jail on each one of these ten counts?

A. No, I did not.

Q. Did you hear what the federal agent said to your brother, the questions he asked him?

A. There was two federal agents, there was William REILLY and "Paul Clift"

Q Well how big was the room that you were in?

A. It was average size room.

Q. Say, average size, maybe 15 feet by ten feet?

A. I'm not too good on measurements all I say is average size room.

Q. From you to me?

A. Maybe.

Q. Where were you sitting in the room, where was your brother sitting?

A. I was sitting to the right of my brother.

Q. Right next to him?

A. I said to the right of my brother.

Q. Next to him, though ?

A. Not right click, like from me to the -

Q. How much room was in between you and your brother?

A. Five feet.

Q. Were the agents sitting across from you?

A. Yes, they were.

Q. So that it would be a fair statement to say that you could hear what they were saying to your brother, is that correct?

A. In one sense yes, and another sense, no.

Q. You never heard them tell your brother though that he was facing five years in jail on each one of these counts?

A. No, I did not.

Q. Your brother ever mention that to you?

A. No, he didn't.

Q. Mr. PARKER, I show you Government's Exhibit in evidence, 1, 2 and 3, are those your signatures?

A. Yes, they are.

Q. Would you read the portion directly above your signature?

A. I hereby certify that the answers to the above are true and correct. I understand that a person who answers any of the above questions and the - I'm not sure of the next word here, - is "brought in" by federal officer from purchasing or processing a fire arm. I also understand that the making of any false oral or written statement or the - something - I can't, - I'm

not too good a reader, - of any false or misprint of identification with respect to this transfer is a crime punishable as a felony.

Q. Thank you. You signed that, is that correct?

A. Yes, I did.

Q. Are you telling this Jury that for ten dollars you committed ten felonies?

A. Pardon?

Q. Are you telling this Jury that for ten dollars you committed ten felonies?

MR. NEIDERMEIER: Objection, Your Honor.

THE COURT: We will allow the witness to answer this.

A. I am not quire sure what you are trying to ask.

Q. How much money were you allegedly paid for buying these weapons?

A. Ten dollars.

Q. So that you committed ten felonies for ten dollars?

A. I am not sure of the felonies.

Q. YOu signed your name right under that, is that correct?

A. I signed those forms, yes.

Q. Did you read them?

A. I'm not too good of a reader, sir.

Q. Well sir you answered up here on Part A -

THE COURT: There is no need to shout, Mr. Murphy.

Q. Did you read Part A, sir, before you put your answer down?

A. On this one, no.

Q. You didn't read it?

A. No I didn't, he filled it OUT, the man at GALLANES.

Q. Did he ask you the questions?

A. I just signed them.

Q. Did you fill out that one?

A. Yes, I did.

Q. Did you read it before you wrote down those?

A. Yes.

Q. Did you read Part B before you wrote down those?

A. Yes.

Q. Did you read Part C before you wrote down "no"?

A. Yes I read all through down to H.

Q. Did you read what came after, before you signed your name?

A. I examined it, I glanced at it, I didn't read it fully.

Q You read everything else up until then and then you just glanced at that, is that what you are telling us?

A. Yes. I'm not too familiar with the Federal Fire Arms.

Q. Well sir, you answered all of the questions throughout this entire form, is that correct?

A. Yes.

Q. But on that one portion where it says it is a felony, you don't recall reading that, you just glanced over it?

A. Yes, sir, that's correct.

Q. When did you first see your brother on this day?

A. Oh, you are speaking of 9/28/75?

Q. Yah, 9/28/75.

A. I was asleep atmy home, he woke me around 9:00 o'clock

Q. By the way, did you discuss your testimony with your brother last night?

A. No, I did not.

Q. Where did you go last night?

A. I left here, I went and registered at a motel, went to supper and went back and watched TV and then went to bed.

Q. You didn't see your brother at all last night?

A. He was in the room with me, yah.

Q. Your brother tell you any of the questions I asked him yesterday?

A. No.

MR. NEIDERMEIER: Objection, he has already testified he didn't discuss it with his brother.

THE COURT: We will allow the question and the answer to stand.

Q. You and your brother were in a motel room last night and nobody discussed any of the questions that were asked or any of the testimony that was given yesterday?

A. (No response).

Q. Is that your testimony?

A. Yes, sir, that is correct. As I was told when I left the court room I wasn't to discuss it with no one.

Q. When did you first see your brother on September 20th?

A. I saw him 9:00 o'clock in the morning.

Q. 9;00 o'clock in the morning?

A. Right around there, yah.

Q. Is that at your house?

A. Yes.

Q. Who was at the house when your brother arrived?

A. It was my wife and two boys.

Q. Your wife and two boys?

A. Yes.

Q. Would it refresh your recollection if I told you your brother testified that it was your girlfriend and some other guy who was at the room at the house?

A. No, that is not correct.

Q. What were you doing when he arrived?

A. I was sleeping.

Q. You work the night before?

A. Yes, I did.

Q. What do you work as?

A. I was working right up until 9-29-1975 as a taxi driver and then there is a Town Ordinance requires you to renew your taxi license and I was waiting for my Vermont license. I had to take the test and wait for it.

Q. So, on 9-19 you worked that night up until midnight as a taxi cab driver?

A. Yes, sir.

Q. By the way, how long has your brother lived in Brattleboro?

A. I'm not sure.

Q. Well, give ma an approximate.

A. I can't, - I, -

Q. Has he lived there one year, two years, three years, five years?

A. Between two to five. I don't know.

Q. Between two to five?

A. Maybe, maybe more, I don't know.

Q. Maybe more?

A. I'm not sure.

Q. By the way, your brother have a driver's license in Vermont?

A. No, he does not.

Q. He's - isn't it a fact that the reason he doesn't have a driver's license in Vermont is that he just moved to Brattleboro from New Hampshire right before this incident?

A. Not to my knowledge, no.

Q. Do you know why he do n't have a driver's license in Vermont?

A. I know he has a New Hampshire license, yes, but I do not know any reason why he has a, doesn t have a Vermont license.

Q. But he has a New Hampshire driver's license?

A. Yes, sir, that's correct.

Q. By the way, have you ever been to Clapp's prior to this date?

A. Yes, I have.

Q. How many times have you been in Clapp's?

A. About once.

Q. About once?

A. Yes.

Q. Has ur brother ever been to Clapp's with you?

A. Not to my knowledge. I can't say for sure if he has or hasn't.

Q. You have only been there once sir, do you remember if he was there with you?

A. No, he was not with me.

Q. Does your brother have a fishing license?

A. I believe he does.

Q. Where were you employed as a taxi cab driver?

A. Yellow Cab.

Q. How long were you employed there?

A. I can't recollect that. I don't remember as well as some other people.

Q. Well, were you employed there a year, were you emplpoyed there two years?

A. No, I wasn't employed there a year.

Q. How many months were you employed there?

A. I, approximately, approximately, before the incident happened I think I was there five weeks.

Q. And did you have a Vermont driver's license then?

A. No, I did not at that time, No, I didn't.

Q. Did you ever have a Vermont driver's license prior to September 20, 1975?

A. No, I did not.

Q. How long have you lived in Vermont prior to September 20, 1975?

A. BEtween 17 and 19 months, pretty near two years.

Q. You have a fishing license, is that correct, sir?

A. Yes, sir.

Q. Can you purchase weapons with a fishing license?

A. You can purchase them at, that's a proof of identification for the State, yah.

Q. So your brother could have purchased these weapons with his fishing license, is that correct?

A. Yes, he could have.

Q. By the way, did your brother know that you didn't have a license?

A. You want to rephrase that?

Q. Your brother know you didn't have a driver's license?

A. I'm not sure if he did or if he didn't, I can't speak for that.

Q. How often did you see your brother?

A. How often do I see him?

Q. How often did you see your brother prior to September 20, 1975?

A. I don't see him only off and on, you know.

Q. Off and on, once a week, once a month?

A. Some times.

Q. Once every two months?

A. Sometimes I see him once a week. It all depends on you know, what's going on, what I am doing, what he is doing, this sort of thing.

Q. How far away from your house does your brother live, in

miles, approximately?

A. I wouldn't say more than a mile at the most. Not even that.

Q. Now, your brother know where you work?

A. Yes, he does.

Q. Your brother have, your brother ever come to the place where you work at?

A. Off and on, not very often. We don't mix working and talking together a habit. It's not good for your employer.

Q. Did you ever tell your brother you are losing your job because you had no license?

A. Yes, I did. Because you're only allowed to drive so many months on New Hampshire license.

Q. So, your brother knew you, on September 20, that you never, you didn't have a Vermont driver's license, is that correct?

A. I'm not sure if he, - I wouldn't say for sure, yes or no.

Q. Sir, if you told your brother that you were going to lose your job and you lost your job on September 19th, 1975, then on September 20th, you would have known you were losing your job because you didn't have a Vermont driver's license?

A. That's correct.

Q. Is that correct?

A. That's correct.

Q. So that on September 20 your brother knew that you didn't have a Vermont driver's license, is that correct?

A. To the best of my knowledge, yes.

Q. When your brother came up to see you, as you contend, you were asleep, is that correct?

A. Yes, that's correct.

Q. Did he wake you up?

A. Yes, he did.

Q. What did he say to you?

A. That he had a couple of guys downstairs who would like to buy some revolvers, or guns, whichever.

Q. Did he mention anything to you about how much they were going to pay for them?

A. Not to my knowledge, not until we got downstairs.

Q. Well, would it refresh your recollection if I told you that he stated that he told you that they were going to pay two dollars for them when you were up in the house, ....

MR. NEIDERMEIER: Objection, Your HOnor, I don't believe that is a proper question. The witness has already testified that nothing was said up there.

THE COURT: We will allow the question.

Q. Does that refresh your recollection for you, sir?

A. That there was, ...

Q. Sir, does it refresh your recollection that your brother testified that when he came up to the house, he told you that they were willing to pay two dollars?

A. He said they were willing to pay, he didn't say how much, as far as I can remember.

Q. So that doesn't refresh your recollection?

A. No, it doesn't.

Q. Your brother is incorrect when he states that?

A. I cannot speak on that behalf.

Q. Now, did you get dressed at that point?

A. Yes, I did.

Q. Go downstairs at that point?

A. Yes, I did.

Q. When you were downstairs you had a conversation with somebody, is that correct?

A. Yes, sir.

Q. It is at that point that you arrived at the ten dollars, is that correct?

A. Before there was a discussion before we left the house?

Q. Before you left the house you arrived at the ten dollars?

A. Before, yes, sir, there was an offer of two dollars. I said, no, then there was an offer of ten and I said okay.

Q. Was this inside the house?

A. No, this was outdoors by the car parked in the driveway right beside the house.

Q. Did they offer you two dollars and offer your brother two dollars?

A. I can't remember for sure if they had offered him ten dollars or two dollars, - in the beginning.

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Q. They just offered you two dollars, is that correct?

A. Yes, as far as I can remember.

Q. By the way did your brother know that they had offered two dollars prior to this offer?

A. I'm not sure.

Q. When they went outside, did they offer your brother two dollars?

A. As best as my recollection, yes.

Q. What did your brother say when they offered him two dollars?

A. As far as I can remember, he said, no.

Q. Your brother, was offered two dollars and he said no, also?

A. As far as I can remember, yes.

Q. Would it refresh your recollection if I told you your brother testified that he was offered two dollars to do it and that he went and got you and you were the one that said you wouldn't do it for two dollars?

A. As I said when I went down, no, I would not do it for two, then he was offered ten and I said, yes.

Q. Did you and your brother discuss it prior to going down as to how much money you were going to ask for?

A. No.

Q. So that is your testimony that when you went downstairs you didn't know how much money they were offering?

A. No, I did not know.

Q. By the way, you had never bought guns before from Clapp's or Galanes?

A. I have never owned a fire arms in my life.

Q. I am not asking you whether you owned one, I am asking you whether you bought one?

A. No, I have never bought one in my life either, sir.

Q. You worked until 12:00 o'clock the night before, is that correct?

A. Yes, that is correct.

Q. Did you go right home after work?

A. Yes, sir, I do.

Q. What time did you go to bed on September 19, September 20, at that point?

A. I came home had a coffee like I always do and went to bed.

Q. In bed by 12:30?

A. Well, between 20 past and 12:30, yah.

Q. Your brother came over and you immediately got out of bed and went downstairs, is that correct?

A. Yes, I got up and got dressed then went down.

Q. By the way, your brother told you that there's some guys downstairs that want to buy guns, is that correct?

A. Yes, I wouldn't say yes to that, yes only that I can't personally remember if he said guns or revolvers.

Q. Well, -

A. It's the same thing but just for the record.

Q. You and your brother never sold guns to anybody before, had you?

A. No, sir, I never dealed with guns, never had no occasion to dealing, even think of it.

Q. And that is the first itme you ever did this and you got out of bed immediately and went downstairs and started bartering over the price, is that correct?

A. Yes, sir.

Q. Is that your testimony?

A. Yes, sir, it is. I have never done anything like that before.

Q. Your brother came directly to you, is that correct?

A. Yes, sir, yes, it is.

Q. And your brother had a fishing license and your brother knew that you didn't have a driver's license and you got out of bed and came right down to buy guns for these two strangers?

A. Yes, sir.

Q. Yah, by the way, did they say they were giving your brother ten dollars, too?

A. In the discussion, yes.

Q. Did you discuss your testimony with the AGent REILLY?

A. No, I did not.

Q. Never gave a statement to Agent REILLY.

A. I, are you saying one thing and leading into another, you are saying you mean testimony here?

Q. Yah.

A. No, sir, I did not.

Q. Now, did you ever give him a statement?

A. Yes, I did give him a statement in Brattleboro, Vermont.

Q. Did you tell him in that statement that you agreed on a

price of ten dollars?

A. To the best of my knowledge, yes.

Q. Did you ever say that you agreed that each of you would get ten dollars?

A. I can't remember for sure.

Q. YOU don't remember that?

A. No, sir.

Q. When you went to Clapp's, all right, -

A. Yah.

Q. - who went in to Clapp's?

A. Well, the first time the defendant BOBBY and myself did.

Q. Bobby, being?

A. The defendant over there in the blue suit.

Q. Where was your brother at this time?

A. He was with George.

Q. By the way, do you know you were doing anything wrong?

A. Well, like I said before, earlier, -

Q. YOu can answer that "yes" or "no" please.

A. I'm not sure, like I said, I'm not that familiar with gun laws.

Q. You are not that familiar with the gun laws?

A. No, sir, I am not.

Q. Well, did you ever ask yourself, sir, why would people be willing to pay money for me to go get them guns if there wasn't something wrong with it?

A. Well, there's my answer to this question sir, when

you need money for food and stuff you usually do what you want, too, you also figure that I have never bought guns and I didn't realize there was this much of a crime behind it, to buy guns for out-of-staters. I did not realize it at that time. If I did, I wouldn't have done it.

Q. You didn't realize it was a crime?

A. No, sir, I didn't realize that it was a crime. I thought everybody had a constitutional right of buying what they wanted to buy.

Q. Well, sir, if they could have bought anything they wanted to buy, they wouldn't have needed you, isn't that correct?

A. I'm not sure.

Q. But you got out of bed and went with them down to Clapp's is that correct?

A. Yes, sir.

Q. When you went into Clapp's who went into Clapp's, you and Bobby, just?

A. Yes, just him and I.

Q. Was there anyone else present there in Clapp's when you went in?

A. Yes, the store clerk.

Q. Any other people in the store?

A. I think Mr. Clapp's was up on the further balcony of the store area. It's like a balcony with his office that overlooks the store.

Q. How many patrons were in the store?

A. I'm not sure.

Q. Well, was there anyone else in the store?

A. There was a cashier to the right up front.

Q. Were there any people that you knew in the store by name?

A. No, I'm not that, not that I can remember.

Q. Was, so there were no other witnesses but you and the person that you allegedly bought the gun from?

A. Yes, sir, the store clerk.

Q. Mr. Clapp see what occurred?

A. I don't, - I don't know for sure. I don't think so. I think he was doing paper work or something to this effect. Can't speak for Mr. Clapp.

Q. The cashier, was he right there?

A. Yes.

Q. So he could view what was going on, is that correct?

A. I think he could.

Q. There were no customers in the store, though?

A. I can't remember.

Q. Now, when you were in Clapp's, what occurred in Clapp's?

A. Bobby looked through the guns there to the case, and spotted a Derringer and we left and he said he would be back and we left there and then later we met George, after we left.

Q. It was just you and Bobby though, is that correct?

A. The first time, yes.

Q. You make a statement to the Brattleboro Police Department in which you stated that these guys looked at the guns,

both of them they spotted a Derringer, then crossed it out after you made the statement?

A. Pardon, I'm not, -

Q. Did you make a statement to the Brattleboro Police Department, that these guys looked at the guns, the both of them, they spotted a Derringer, then crossed it out after writing that.

A. Not to my recollection, I can't be sure.

Q. You don't recollect that?

A. No, sir.

Q. By the way, were you given any instructions on how to testify when you came up here?

A. No, sir, I was not.

Q. Have you ever been convicted of a crime?

A. Yes, sir.

Q. What were you convicted of?

A. Larceny. What I mean by larceny, it was a bad check.

Q. What year did you receive the punishment for that?

A. Probation.

Q. For how long?

A. For one year.

Q. When did that occur?

A. Five years ago, four, five [illegible] ago, something like that, I can't be sure, four, five, anyhow.

Q. Did you read Section B on this form concerning crimes that you answered "no" to?

A. I'm not sure. I mean, I can't recollect.

Q. Did you just testify before that you read it, sir?

A. Yes, I did.

Q. Did you answer it truthfully?

A. I'm not sure that's not a felony to say "no" to a larceny charge which I wasn't in jail for. It's what they say "convicted," right?

Q. Never mind, you've been convicted of a crime previously?

A. Previously?

Q. Prior to September 20, 1975?

A. No, I have not.

Q. When were you convicted of a crime?

A. You mean the larceny charge?

Q. Yes.

A. I said four, five years ago.

Q. That's before September 20, 1975?

A. Yes.

Q. And you were aware of that when you filled out the form, is that correct?

A. You sort of forget things.

Q. You forgot about it?

A. (No oral response)

Q. How many other times have you been involved with the law?

A. That's the only time that I can remember, except for speeding tickets.

Q. Well, sir, if that's the only time that you have ever been involved with the law, you are telling me you forgot about it?

A. I, you remember but you don't think about it every

A. Yes, I did.
Q. Did you answer it truthfully?
A. I'm not sure that's not a felony to say "no" to a larceny charge which I wasn't in jail for. It's what they say "convicted," right?
Q. Never mind, you've been convicted of a crime previously?
A. Previously?
Q. Prior to September 20, 1975?
A. No, I have not.
Q. When were you convicted of a crime?
A. You mean the larceny charge?
Q. Yes.
A. I said four, five years ago.
Q. That's before September 20, 1975?
A. Yes.
Q. And you were aware of that when you filled out the form, is that correct?
A. You sort of forget things.
Q. You forgot about it?
A. (No oral response)
Q. How many other times have you been involved with the law?
A. That's the only time that I can remember, except for speeding tickets.
Q. Well, sir, if that's the only time that you have ever been involved with the law, you are telling me you forgot about it?
A. I, you remember but you don't think about it every

Q. Bought a fishing pole in Clapp's too?

A. No, sir.

Q. What did you buy in Clapp's?

A. I didn't buy nothing.

Q. What did you do the one time you were in there?

A. Pardon?

Q. What did you do the one time you were in there?

A. It's the first time?

Q. (Nodded)

A. I went in there and looked around for a fiber glass pole, they didn't have any that I liked.

Q. How long ago was that?

A. That was this summer, in the summer around June.

Q. And that is when you went across the street and bought it in GALANES?

A. Yes, sir.

Q. When you bought -

A. To the best of my knowledge.

Q. When you bought it in the GALANES, did you sign any sales, did they take your name down on any sales receipt?

A. For the fishing pole?

Q. Yes.

A. No.

Q. So you never gave them your name or anything, there is no record of this, is that what you are telling us?

A. That's correct.

Q. There would be no record of your buying anything in

Clapp's either?

A. No, sir.

Q. Now, when you were in Clapp's, did you purchase anything?

A. I never purchased anything from Clapp's sporting goods store to the best of my knowledge.

Q. On August 20, 1975, when you and Bobby allegedly went in there, did you buy anything?

A. No, not to my remembrance, no, I did not.

Q. Not to your remembrance, no, you did not?

A. That's correct.

Q. Did there come a time when you and Bobby left Clapp's?

A. Yes, sir.

Q. Where did you go then?

A. We walked down the street, if I remember right, we crossed the street and met George.

Q. Did you then go back in to Clapp's?

A. George, probably and myself, yes.

Q. By the way, where were George and where were George and Bobby going?

A. They were on my right side, I was staying down below the corner.

Q. No, when you left Clapp's, where were, where was George at that point?

A. He was with us, Bobby and myself.

Q. You and Bobby went in to Clapp's, is that correct?

A. The first time, yes.

Q. When you came out of Clapp's, where was George?

A. He was down the street.

Q. When you say "down the street," where was he?

A. I can't pinpoint it, sir.

Q. What was he doing?

A. I believe, I'm not sure, but I think he was talking with WAYNE, but I wouldn't say for sure.

Q. You think he was talking with your brother, is that what you're going to say?

A. Yes.

Q. And where is Baker's?

A. That is at the top of Main Street hill.

Q. Have you ever previously testified that your brother and George were outside Baker's?

A. Not that I can remember.

Q. May I have a second, Judge?

THECOURT: Yes.

Q. Do you remember giving a statement to the Brattleboro Police Department?

A. I gave them one, yes.

Q. Do you remember telling them, "these guys looked at guns both, the both of them, they spotted a Derringer, Bobby looked at the guns, my brother and the other New Yorker were waiting at Baker's Store"?

A. They went to Baker's.

Q. Sir, do you remember giving that statement to the Brattleboro Police Department?

A. I'm not positive.

Q. Now you remember that your brother and George were at Baker's store, is that what you are telling us?

A. No, it's not.

Q. What are you telling us?

A. I started to say they went to Baker's for cigarettes when Bobby and I left.

Q. By the way, was Baker's open at that time?

A. I'm not positive.

Q. When you came out of the store with Bobby, where was George?

A. If I remember, I'm not sure, if I remember, he was on the right side of the street up by, down by, just a little below GALANES.

Q. He wasn't at Baker's, as you previously stated?

A. I did not state that he was at Baker's, I said they went for cigarettes there.

Q. Sir, - "my brother and the other New Yorker were waiting at Baker's Store," - -

A. I said, I'm not sure.

Q. Did you say that?

A. I'm not sure.

Q. Is that your signature?

A. Yes.

Q. When you came out of Clapp's store, what happened after that, George now went back into Clapp's with you?

A. After we met George, Bobby, myself and George went back.

Q. When you went into Clapp's how many people were in Clapp's

now, when the 3 of you were in there?

A. I'm not sure.

Q. By the way, what was Bobby wearing?

A. I can't remember what he was wearing.

Q. Now, what happened when you were in Clapp's on the second occasion?

A. To the best of my knowledge, George purchased the .22 Derringer, a box of .22 shells for the Derringer and Bobby purchased a .38 revolver.

Q. By the way, were there three other guys outside with your brother?

A. I don't know.

Q. You were outside with your brother when you came out of Clapp's on the first occasion, is that correct?

A. Yes.

Q. Were there three guys outside there with them on that occasion?

A. Not that I can remember.

Q. Who was outside with them when you came out of Clapp's?

A. As far as I can remember, George and my brother.

Q. You didn't see three other guys?

A. Not to my knowledge.

Q. Did you see a guy with a yellow ski jacket?

A. Not that, not that I can remember.

Q. Well, you had remembered seeing them or you would remember seeing them if they were there, wouldn't you?

A. I'm not sure.

Q. Did you pay any of the money for any of these weapons?

A. Did I pay the money?

Q. Yes.

A. No, I did not.

Q. Did you hand any of themoney to the cashier?

A. No, I did not.

Q. You never touched any money?

A. Never, at any time, did I touch any of the money.

MR. MURPHY: May I have just a second, Judge?

Q. You never touched any of the money?

A. No.

Q. Are you positive?

A. Yes, sir, that's correct.

Q. Sir, I am going to show you a statement made by Mr. DUBOROW who was the clerk of the store.

MR. NEIDERMEIER: Your Honor, I am going to object to a statement made by someone who is not present in Court and who has not testified.

MR. MURPHY: Judge, I do believe I have a right to refresh his recollection from anything. That's all I'm going to ask him.

MR. NEIDERMEIER: Not from a statement made by somone else, Your Honor. If he wants to call him as a witness in his case, then, - -

THE COURT: Objection is sustained.

Q. Judge, may I take exception to your ruling, I believe the law is that he can refresh his recollection from

anything.

THE COURT: You certainly may.

MR. MURPHY: Thank you.

Q. You never paid any money whatsoever, is that correct?

A. That's correct, I never touched the money.

Q. By the way, when you went in there the first time, did Bobby purchase any gun on that occasion?

A. The first time, no.

Q. Did he have any money on him on that occasion?

A. I don't know, I didn't look in his wallet.

Q. Did he make any statement as to why he couldn't purchase the gun?

A. He said he would be back with the money.

Q. So he didn't have any money, is that correct?

A. I'm not sure if he had money the first time or not'

Q. Well, you went outside with him, is that correct?

A. Yes, sir.

Q. Did he get any money from George?

A. I didn't see any money transferred, no, from George to Bob.

Q. And you were right there, is that correct?

A. Yes, sir, that's correct.

Q. Now, after you went outside with him the three of you went back in to Clapp's, is that correct?

A. Yes sir.

Q. Do you remember making this statement to the Brattleboro Police Department, "Bobby spotted a Derringer, he liked

" - he told the clerk he would be back, when he got the money. From there, Bobby and I went to GALANES Store, Bobby looked at some guns there and told the clerk he would be back when he got some money," is that, - did you make that statement?

A. I believe I did.

Q. In your statement here, you told the Police Department that you wer[illegible]rom Clapp's to, directly to GALANES?

A. I'm not sure. I can't remember everything that is on those papers, there is a lot of papers here.

Q. Sir, did you testify in the Grand Jury that you went to both places, before going back to Clapp's to purchase anything?

A. I'm not sure, I can't remember.

Q. Well, did you go from C[illegible]app's to GALANES before coming back to Clapp's or did the three of you go back to Clapp's and then go to GALANES?

A. I'm not sure.

Q. You and Bobby, went into Clapp's by yourself the first time, is that correct?

A. Yes, sir.

Q. So your testimony is that Bobby found a gun that he liked?

A. To the best of my knowledge, yes.

Q. Did he purchase the gun then?

A. The first time, no.

Q. Then he went back outside and he got George, is that your testimony?

A. To the best of my knowledge.

Q. Did your brother come back into Clapp's with you?

A. Did my brother come back into Clapp's?

Q. Yes.

A. No, he didn't.

Q. Your brother waited outside, is that correct?

A. Yes.

Q. Now, when you went back into Clapp's, did you go directly to Clapp's?

A. The second time?

Q. Yes.

A. I'm not sure. I can't remember. I can't remember.

Q. When you went back into Clapp's, did Bobby pick out a .38?

A. To the best of my knowledge.

Q. Were you standing right there?

A. Yes, sir.

Q. Did the Clerk behind the counter hand him the gun?

A. Yes, he did.

Q. Did he pay the Clerk the money directly?

A. To the best of my knowledge, he did. I know I didn't touch the money.

Q. Now, did the other person pay the Clerk for another weapon?

A. You are referring to George?

Q. Yes.

A. Yes, he did.

Q. Did you pay any money for any of these weapons?

A. No, sir, I did not.

Q. Did you ever put any money on the counter for these weapons?

A. No, I did not. As I stated earlier, they paid for the weapons.

Q. Did you ever take the .38 outside and give it to somebody else who was outside with your brother?

A. No, sir, I did not.

Q. When you went outside after coming out of Clapp's, on the second occasion, how many people were outside with your brother then?

A. I didn't see my brother when I came out after George was with us.

Q. Where was your brother before you went into Clapp's the second time?

A. Down on the street.

Q. Where was your brother when you came out of Clapp's the second time?

A. I think he was down by Baker's.

Q. Is Baker's down the street from the store?

A. Yes, sir.

Q. Where was the car parked?

A. Down over the hill.

Q. Down over the hill?

A. Yes.

Q. Past Baker's?

A. Yes, it's past Baker's.

Q. Did you walk back to the car?

A. At what time?

Q. After you came out of Clapp's?

A. No, we did not go back to the car.

Q. By the way, while you were in Clapp's, did you ask the Clerk behind the counter, how many guns you were allowed to buy?

A. I, yes, I said to him, is there any laws now that how many guns you can buy and he said, not to his knowledge there wasn't.

Q. If there any laws now as to how many guns you can buy, you had never bought a gun before, though?

A. That's correct.

Q. But you wanted to know if there is any laws now with regard to how many guns you can buy?

A. There's no crime in finding out how many you can buy.

Q. Sir, you, if you wren't dealing in guns and you didn't know anythingabout guns, why were you asking the question about whether or not you could buy more than one gun now?

A. Because the reason why I asked that question was that I wasn't sure of the gun laws and I didn't want to get into any kind of problems like this here.

Q. You didn't want to get into any kind of problems? Did you know you were comitting a crime when you signed the statement?

A. As I said before, I didn't realize it.

Q. You didn't realize it but yet you questioned the man as to

how many guns you could buy now?

A. That's true.

Q. And he told you that there was no limit, is that correct?

A. That's correct.

Q. Now, is your testimony that you left there and that now you went to GALANES?

A. After George was with us?

Q. Yes.

A. Yes, sir, that's correct.

Q. And you went to GALANES to buy another gun?

A. I went to GALANES to sign the form, I did not buy it.

Q. Where is GALANES, in relation to Clapp's?

A. That is probably a hundred yards on an angle like that from GALANES, from CLAPP's, it is across the street.

Q. Across the street and down?

A. Yes.

Q. Oh, did you walk directly across the street?

A. I'm not positive, I think we walked down about 20 feet, then across.

Q. You walked down toward where your brother was, is that correct?

A. Yes.

Q. Down towards where the car was?

A. (No oral response).

Q. Is that correct?

A. In that direction, but we did not go to the car.

Q. Well, how far away were you from the car?

A. Like I stated earlier, the car was parked down over the hill.

Q. You eventually went to the car, is that correct?

A. Yes, after we left GALANES.

Q. Well, when you were going to go to GALANES you didn't see your brother, then?

A. Not to my knowledge, no.

Q. Well, did you pass by Baker's?

A. No, we didn't. We didn't go down that far.

Q. How far away were you from Baker's?

A. By car, it would have been probably 10, about 20, I guess, 10, 15, 20 car lengths, I'm not sure of the footage.

Q. Did you see your brother standing outside Baker's?

A. Not that I can remember.

Q. Were there any people standing outside of Baker's?

A. Not that I -

Q. Did you see anyone with a yellow jacket on, outside Baker's?

A. I didn't see nobody, as far as I can remember. I'm not sure if there was anybody down there or not, I can't remember.

Q. By the way, you signed the forms in CLAPP's, that you were purchasing the weapons, is that correct?

A. I signed the forms, yes.

Q. Did he put guns in the same bag?

A. I'm not sure, I can't remember if he did or he didn't.

Q. Did he put guns in the same bag?
A. I'm not sure if he did, or he didn't.
Q. Did he put them in, - do you know if he put them in two different bags?
A. I said, I don't remember.
Q. Did the Clerk hand them to you?
A. I have no idea.
Q. You signed the form to buy the guns and the clerk handed the guns to someone else?
A. That is correct.
Q. And I suppose he handed them to Bobby, is that correct?
A. To the best of my knowledge, yes.
Q. To the best of your knowledge?
A. Yes, I know I couldn't carry them out.
Q. So that when you went into GALANES, Bobby would have had the guns, then?
A. No, Bobby handed the guns to me after we left the store.
Q. When you walked in to GALANES, did you have the guns?
A. Yes, sir.
Q. And you had them in how many bags?
A. I'm not positive.
Q. Well, are the guns in boxes?
A. I can't remember, sir, if they were in boxes or if they were loose.
Q. How many hands were you carrying the guns in?
A. I think one, but if there were one or more bags, I can't remember.

Q. When you went in to GALANES, now, how many guns were purchased in there?

A. In GALANES?

Q. Yes.

A. Just one.

Q. So that is the third gun now, that's being purchased, is that correct?

A. Yes, sir.

Q. Did you pay for that weapon?

A. No, I did not.

Q. Did you ever put any money up for that weapon?

A. No, I did not.

Q. Did you ever touch any money?

A. No, I did not.

Q. After you left the GALANES, where did you go?

A. That is when we continued to go down to the car.

Q. Now, why, while you were in GALANES and CLAPP's, did either one of the clerks ask you who was getting the guns?

A. Not to my knowledge, no.

Q. Were either one of them suspicious as to who was getting the guns, no questions were asked?

A. No.

Q. You never, by the way, you didn't know anyone in either one of these stores, did you?

A. No, not to my knowledge, I didn't.

Q. While you were in these two stores, you handle either one of, or any of these three guns?

A. I think I looked at one .38 at Clapp's, with Bobby.
Q. While you were in GALANES, did you handle the gun at any time?
A. No, I did not. I carried the gun out when we left GALANES.
Q. GALANES put it in a bag for you?
A. Yes.
Q. So now you had two bags?
A. Yes.
Q. Three guns?
A. Yes, sir.
Q. You were leaving GALANES?
A. Also looked at a shoulder holster while there.
Q. Sir, they looked at a shoulder holster?
A. Yes, sir.
Q. Was a shoulder holster purchased?
A. I can't remember if it was or wasn't.
Q. By the way, I assume you gave them all 3 guns, is that your testimony?
A. Do you want to repeat the question?
Q. Strike it. Never mind. When you left there, did you see your brother then?
A. After we got back to the car, yes.
Q. Your brother was at the car?
A. Right around that area.
Q. How many other people were with your brother?
A. He was by himself to the best of my knowledge.

Q. Was your brother across the street from the car when you got to the car?

A. I'm not sure.

Q. Before you went into GALANES, did your brother call you?

A. Not to my knowledge.

Q. Sir, is the answer "yes" or "no"?

A. I said, I'm not sure.

Q. Did your brother have three other people with him?

A. Not to my knowledge.

Q. Isn't it a fact that you gave the other three people the other two guns and you only gave one gun to SORIENTI, George SORIENTI?

A. No, that is not correct.

Q. Is it your testimony that there were no other people there with your brother?

A. To the best of my knowledge.

Q. Well, you were talking with your brother, weren't you?

A. I can't remember.

Q. Now, it is at this point that you supposedly got a telephone number from Bobby?

A. Yes, on a napkin-

Q. Well, did you call that telephone number?

A. Later on that day, yes, I did. I tried any how.

Q. Do you have the telephone number with you?

A. No, I do not.

Q. What did you do with the napkin?

A. I turned it over to the Police Department, if I remember

right.

Q. You turned it over to the Police Department. Who did you turn it over to?

A. I'm not sure, I don't know if it was Mr. "ARMOUR" or if it was ATF I turned it over to.

Q. But you gave them this napkin?

A. Yes, I did.

Q. Now, as far as you know, they have this napkin now, then?

A. I'm not sure if they have it or they don't, as far as I know they should have it. I gave it to the Brattleboro Police Department or the ATF.

Q. When you got back to the car, did you suggest to them that you could buy all the guns they wanted?

A. If they wanted it, I stated to them, if they wanted to buy somemore guns up here, if I could help them, I would be, you know, willing to help them buy them up here.

Q. You didn't tell them anything about being able to get all the guns you want up here?

A. No, sir, I did not.

Q. Did you give them your phone number?

A. I don't have a phone. I gave them the Yellow Cab and told them if they were coming up again, to call this number and send a message to me to call New York and then I would call them.

Q. And they, he gave you a phone number?

A. Bobby did, yes.

Q. And it was the wrong number?

A. Yes, sir, it was a no good number.

Q. But supposely he's the one that wanted to buy more guns, is that correct?

A. Bobby is, yah.

Q. But he gave you the wrong phone number?

A. Yes, sir, because I did call that number.

Q. Now, did you walk home at that point?

A. After we left, yes.

Q. Who walked home?

A. My brother came to my house.

Q. How far away from you does your brother live?

A. Not quite a mile, as I stated earlier. I wouldn't say, maybe a fourth, or maybe a half, I'm not sure.

Q. Prior to this, they had asked you for directions, I believe?

A. They asked my brother.

Q. And your brother gave them directions?

A. Yes, he did.

Q. To New York?

A. No, to 91.

Q. To INterstate 91?

A. Yes, sir, that's correct.

Q. And that is going up-state also, is that correct?

A. As far as I know, it goes, it does come up this way and does go down to Massachusetts and so forth.

Q. Okay.

THE COURT: We will recess at this time.

(RECESS FROM 10:45 A.M. UNTIL 11:06 A.M.)

THE COURT: You may continue, Mr. Murphy.

BY MR. MURPHY:

Q. Mr. Parker, after your brother gave Mr. GIALLANZO and the other gentleman directions to the Interstate you and your brother walk home to your house?

A. Yes, sir, that is correct.

Q. Did there come a time subsequent to that when the Clerk from Clapp's, came to your house?

A. That's correct.

Q. How long after you arrived home did he come to your house, approximately?

A. Approximately a half an hour, after I got home.

Q. It is at that point that you called the number that was on the napkin, is that correct?

A. Yes, sir, that is right.

Q. By the way, did Bobby or Mr. GIALLANZO tell you he was from New York?

A. I could tell by the plate number it was a New York car.

Q. Didn't he tell you that number was a Queens, New York number?

A. Yes, that's correct.

Q. When you called, did you call collect?

A. Yes, sir.

Q. And you gave your name, is that correct?

A. Yes, sir.

Q. You previously testified to that, is that correct?

A. I called that number?

Q. Yah.

A. Yes, sir, I did.

Q. And you previously testified that, you previously testified that you called collect, is that correct?

A. I don't believe that there was anything mentioned about the collect charge.

Q. But that is how it occurred?

A. Yes, sir.

Q. How, how long after the clerk left, did you make this telephone call?

A. Oh, about, about 15 to half an hour, 15 minutes to half hour.

Q. So that approximately an hour and 15 minutes after they left, you made a collect call to New York City for them?

A. I believe it was Queens, New York. I did call.

Q. By the way, did you tell the Clerk that you didn't have the guns?

A. To the best of my knowledge, I believe I did.

Q. You don't remember for sure whether or not you told them that?

A. I'm not sure if I did or I didn't.

Q. Did you tell them you would have the guns back to him by Monday?

A. Not the gun, guns, sir, he only needed one for five

days.

Q. Did you tell him you would have it back to him by Monday?

A. I said I'd try to have it back by the time the store would close.

Q. So then sir, you had to tell them you didn't have the gun, is that correct?

A. Yes, sir.

MR. MURPHY: I've got no further questions.

REDIRECT EXAMINATION BY MR. NEIDERMEIER:

Q. Mr. Parker, when you left GALANES Sporting Goods Store and went back to the car, who was holding the three guns?

A. I was.

Q. And what did you do with those 3 guns?

A. George opened the trunk and I placed them there.

Q. Who told you to place the guns in the trunk of that car?

A. To the best of my knowledge, they did, Bobby and George.

Q. You also testified on cross-examination that you gave statements to agents of Alcohol, Tobacco and Fire Arms and also to the Brattleboro Police Department, is that correct?

A. Yes, sir, it is.

Q. How soon after this incident did you go to the Brattleboro Police Department?

A. After I found out that the phone number on the napkin was no good.

Q. And he, did you go down there voluntarily?

A. Yes, I did.

Q. And did you give the Brattleboro Police Department a statement?

A. Yes, I did.

Q. Was that the truth?

A. The truth, to my knowledge.

MR. MURPHY: Objection.

THE COURT: Yes, we will sustain the objection.

Q. Were you promised anything by the Brattleboro Police Department?

MR. MURPHY: Objection.

THE COURT: Objection over-ruled.

A. No, there was not.

Q. Did you tell the agents from Alcohol, Tobacco and Fire ARms substantially the same thing you told the Brattleboro Police Department?

MR. MURPHY: Objection, Your Honor.

THE COURT: Objection over-ruled.

A. Do you want to repeat the question?

Q. Did you tell the agent from Alcohol, Tobacco and Fire Arms substantially the same thing that you told the Brattleboro Police Department?

A. Yes, sir.

Q. You testified on cross-examination that you signed 3 fire arms transaction records for the 3 guns, is that correct?

A. Yes, sir.

Q. And on each of these forms above your name, what is written?

A. Do you want me to read it?

Q. Just above your name, what do you certify, who do you certify that you are?

A. Clarence Parker.

Q. And who do you certify that you are, recording the purchase of the guns?

A. CLARENCE R. PARKER.

Q. You certify you are the buyer?

A. Yes, sir.

Q. Was that true?

A. No, sir.

Q You testified on cross-examination that you once received a probationary sentence for issuing a bad check?

A. Yes, sir.

Q. And what was the term of the probationary sentence?

A. It was just probation. I had to - I had to pay the check off through the probation department.

Q. Was there any term given exceeding one year?

A. Any term, what do you mean?

Q.Any probation sentence, any sentence given to you which exceeded one year?

A. No, sir.

Q. So when you stated on these three forms "no" to the question, "Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year," this was true, wasn't it?

A. Yes, sir, when you -

Q. When you purchased, when you signed your name to these 3 fire arms transaction records, what identification did you use?

A. Fishing license.

Q. I show you Government's Exhibit #3, is it indicated on there what identification you used?

A. Yes, below my signature it says, "person described," it says, "none." Type of identification, "Driver's license," et cetera, and right under it has "Vermont fishing license, resident."

Q. How about Grand Jury, or Government's Exhibit #1 and 2, what identification did you use there?

A. Again under 9, it says, "Type of identification, driver's license," et cetera, it says, "Hunting license."

Q. Hunting license? Now on that one?

A. It was the same as that last one - (SIMULTANEOUS VOICES)

Q. Hunting license?

A. Hunting license, yes, sir.

Q. You also testified that you and Bobby first went into Clapp's, was that correct?

A. Yes, sir.

Q. And Bobby picked out a, or looked at a .22 Derringer?

A. Yes, sir, that is correct.

Q. What did he say when he looked at the gun?

A. He told the clerk that he would be back.

Q. And did he leave then?

A. Yes, sir, we both did.

Q. Who did he come back with?

A. Georye, myself and Bobby.

Q. When you came back into the store, who paid for that .38?

A. You mean, at Clapp's?

Q. In Clapp's?

A. Bobby did.

Q. Who paid for the .38 at GAlanes?

A. Bobby did.

Q. Mr. Parker, before you left this court room yesterday, did the Judge tell you not to discuss your testimony with anyone?

A. That is correct.

Q. And did you follow his instructions?

A. Yes, sir, I did. I discussed my testimony with no one.

Q. Nothing further, Your Honor.

THE COURT: Mr. Murphy?

MR. MURPHY: I have some questions, Your Honor.

RECROSS EXAMINATION BY MR. MURPHY:

Q. You don't own a weapon now sir and you have never owned a weapon, is that correct?

A. Yes, sir, that is correct.

Q. What identification did you use in Clapp's when you purchased these weapons?

A. On the form it says "hunting." I had a fishing license, but it was the statement there, says, "hunting License."

Q. They put down by mistake you had a hunting license?

A. Yes, sir, that is correct.

Q. You never showed him a hunting license?

A. No, sir, I never had a hunting license.

Q. Let me ask you this sir, you just testified when you filled out this form that you filled it out honestly, that the crime punishable by imprisonment for a term of one year, that you understood that to mean that that came within what your sentence was, is that correct?

A. I'm not positive.

Q. When you filled out Form B, here on the form?

A. As far as I know, yes.

Q. Concerning the crime?

A. Yes.

Q. When you were arrested, isn't it a fact that you were arrested for a felony punishable by ten years in jail?

MR. NEIDERMEIER: Objection, Your Honor.

THE COURT: Objection is sustained.

Q. You were arrested for forgery, is that correct?

A. No, sir.

Q. What were you arrested for?

A. I had a checking account of my own and I over-drawed on it.

Q. What was the charge?

A. Larceny.

Q. Grand larceny?

A. No, sir.

Q. Petty larceny?

A. They just said "larceny" to the best I can remember then.

Q. Well, did they tell you it was only punishable by one year in jail?

A. As far as I can remember, I'm not positive of it back then, it was, --

Q. Well sir, isn't it a fact it was punishable by ten years in jail?

MR. NEIDERMEIER: Objection, Your Honor.

THE COURT: Objection is sustained.

A. Not to my knowledge.

Q. Did you plead to a reduced sentence on that?

A. I can't remember, sir.

MR. MURPHY: I have no further questions.

THE COURT: Anything further?

MR. NEIDERMEIER: Nothing further, Your Honor.

THE COURT: that is all, Mr. Parker.

MR. MURPHY: May I approach the Bench, Your Honor?

THE COURT: Yes.

(A conversation, off-the-record, then ensued at the Bench)

THE COURT: It may be necessary to call you back, so you should keep yourself available at least until the Government's case is completed and if you have to come back after that, you will be properly notified, but remain in the vicinity of your house but without discussing the subject of your testimony with any other witnesses.

MR. PARKER: Yes, sir.

THE COURT: Very well, you are excused for the

time being at least.

(THE WITNESS, HAVING BEEN EXCUSED, WITHDREW)

W-I-L-L-I-A-M F. R-E-I-L-L-Y, having been called as a witness by the Government was duly sworn by the Clerk and testified on his oath as follows:

DIRECT EXAMINATION BY MR. HUGHES:

Q. Would you please state your name for the record?

A. My name is William F. Reilly.

Q. Mr. Reilly, what is your occupation?

A. I am a Special Agent with the Bureau of Alcohol, Tobacco and Fire Arms, U.S. Treasury Department.

Q. How long have you been so employed?

A. 16 years.

Q. What generally, are your duties in connection with your employment?

A. Well, primarily we enforce the regulations and the laws concerning the Gun Control Act of 1968.

Q. I will show you Government's Exhibit #4 for identification, and I was wondering if you could identify this?

A. This is a .22 caliber Derringer pistol which I received from George SORIENTI at his residence in Howard Beach, New York.

Q. What is the serial number on this Derringer?

A. Serial number is 2449640.

Q. I now show you Government's Exhibit #1 in evidence, which is a Fire Arms transaction record and what type of weapon is that record talking about?

A. (no oral response).,

Q. What does it describe?

A. Well, this transaction record refers to the sale of this particular fire arm. There are various captions here which indicate it is a pistol, it is a Derringer pistol .22 magnum caliber, the serial number is 2449640. It is manufactured by High Standard Corporation.

Q. Now, is Government's Exhibit #4 for identification, this weapon, the same weapon that is described in the Fire Arms transaction record?

A. Yes, it is.

Q. How do you know that?

A. Primarily by the serial number.

Q. Would it be fair to say there is no duplication of serial numbers on weapons?

A. Yes, sir.

Q. Your Honor, at this time I would like to move for the admission of the Government's Exhibit #4.

MR. MURPHY: Judge, I have no objections.

THE COURT: Very well, before it's, - is the firing pin out?

A. Yes, it is, sir. Just a moment, no, it is not. It is capable of firing a round but there is no ammunition in it.

THE COURT: Well, - -

A. The chamber can be broken.

Q. Let the record reflect I just broke the chamber and it is empty. I want to apologize for disturbing the Court and the Jury and my co-counsel, who is a city boy and quavering. Have you ever had an occasion to see an individual named ROBERT GIALLANZO?

A. Yes, I did.

Q. When was this?

A. This was on October 16th.

MR. MURPHY: Objection, Your Honor.

THE COURT: Well, what is your objection at this stage?

MR. MURPHY: Well, Your Honor, may I state it at the Bench?

THE COURT: Yes, certainly, will you bring up, - Mr. Vesper, do you want to take this?

(AT THE BENCH, OUT OF HEARING BY THE JURY)

MR. MURPHY: The way this is after the fact, it isn't anything that happened, I don't believe there is any relevancy as far as this action. I believe He is completely after the fact, September 20, if he is going to testify to something Mr. GIALLANZO did down at Howard Beach or testify that he took photos of it to identify - - (SIMULTANEOUS VOICES)

MR. HUGHES: That's not correct, Your Honor.

THE COURT: We will ask the Government to "seat" your offer.

MR. HUGHES: I am just showing that he saw him at Howard Beach on a certain date, that is all.

THE COURT: What is the relevancy of that?

MR. HUGHES: To show he is in New York or for residency.

MR. MURPHY: I will stipulate that he is a resident of New York, I don't know that - (SIMULTANEOUS VOICES)

THE COURT: Well, the record, - do you want to stipulate?

MR. MURPHY: I will stipulate that he is a resident of New York.

THE COURT: Okay.

MR. HUGHES: Having in mind that the stipulation is that he was a resident of New York on September 20, 1975?

MR. MURPHY: Yes.

MR. HUGHES: Then I think we ought to hear his testimony.

THE COURT: Very well, the Court understands there is no stipulation about the residence. Go ahead, proceed.

Q. Mr. Reilly, where did you see Mr. GIALLANZO?

A. I saw him at a location in Howard Beach, New York, which is 164-1188th Street.

Q. Wnat date?

A. This was, the date, -

Q. What year was it?

A. It was 1975, last year.

Q. How long after was it, after you started your investigation

in this matter, approximately?

A. After, this is perhaps a month or so after.

Q. What month would that be then, you saw him?

A. Some time in October.

Q. Is Mr. ROBERT GIALLANZO present in court?

A. Yes, he is.

Q. Would you point him out to us, please?

A. The gentleman over there in the blue suit and moustache.

Q. Your Honor, if it Please the Court, would the record reflect that Mr. GIALLANZO has been so identified as the person in the blue suit at the defendant's table?

THE COURT: The record may so indicate, that Mr. GIALLANZO has been identified by this witness.

MR. HUGHES: . have no further questions.

CROSS EXAMINATION BY MR. MURPHY:

Q. Mr. SORIENTI returned that weapon to you,,is that correct? - Is that correct, Agent?

A. Yes, sir.

Q. At the time that Mr. SORIENTI returned the weapon to you, did you have a conversation with him?

A. Yes, sir, I did.

Q. Did you ask him about three guns?

A. I don't remember specifically asking him about three guns, I asked him about this particular gun here.

Q. Did you ask him if Mr. GIALLANZO ever bought any guns?

A. Yes, I did.

Q. And did he tell you that Mr. GIALLANZO never bought any

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guns?

A. He didn't tell me at that time, no.

Q. When you were at his house, did you question him as to whether or not Bobby ever bought any guns?

A. I don't know the topic never came up as far as Bobby is concerned. He was, I was interested in George at the time.

Q. Did you ask him anything about three guns?

A. No, I don't recall asking him that.

Q. AGent, there were three guns purchased, is that correct?

A. Yes, sir, it is.

Q. You went down and he gave you back one gun?

A. Yes, he did.

Q. You never asked him where the other two guns were?

A. No, I was primarily interested in knowing who the other party was.

Q. Did you have conversation with Mr. George SORIENTI at any time before coming in here to Court?

A. On the date that I was down there in New York, the day I spoke to him, yes.

Q. Did he tell you that Mr. GIALLANZO was innocent, that he had no ing to do with this?

A. (No oral response)

Q. "Yes" or "no"?

A. I think he indicated in certain respects, yes, he did.

Q. And was he served with a subpoena to come here to Court today?

A. Yes, he was.

Q. And was he brought up to the United States Attorney's office, upstairs?

A. I assume he was.

Q. And did he repeat that Mr. GIALLANZO was innocent, that he had nothing to do with this?

A. Not to my recollection, I wasn't there.

Q. Was he questioned concerning becoming a witness in this case by the prosecution?

MR. NEIDERMEIER: I am going to object, the witness has already testified that he wasn't there.

THE COURT: Well, if the witness has knowledge that he can respond to the question, the Court will permit him to do so. If he doesn't, I'm sure that Special Agent Reilly probably can answer it that way.

Q. Do you know what Mr. SORIENTI said when he was upstairs?

A. No, I don't. I wasn't present, sir.

Q. Did you have a conversation with the United States Attorney afterwards?

A. I spoke to the United States Attorney Monday.

Q. Did he tell you that Mr. SORIENTI said that Mr. GIALLANZO had nothing to do with this?

A. I don't recall those words, no.

Q. Did he tell you that he was not going to call SORIENTI as a witness?

A. No, sir.

Q. Do you know if Mr. SORIENTI has been released from his

subpoena?

A. I am not aware of that either, sir.

Q. Did you ever have a conversation upstairs with Mr. SORIENTI?

A. I just, all I said, was "hello" to him.

Q. You never had any conversation with him whatsoever?

A. Oh, back in New York I did, yes, when I was conducting my investigation, yes.

Q. And by the way, you have been sitting in this court room for the last two days, is that correct?

A. Yes, sir, I have.

Q. And you have been working on the case with the United States Attorney's office?

A. (No oral response)

Q. Is that correct?

A. Well, that is one part of my duties.

Q. Right, and are you telling me that you don't know what Mr. SORIENTI said to the United States Attorney upstairs?

A. No, sir.

Q. And that they never told you?

A. They never told me.

Q. And that you weren't present?

A. I wasnt present.

Q. Did they ever ask you what Mr. SORIENTI told you about Mr. GIALLANZO?

A. I think we went over our case, yes, Monday.

Q. And you told them that Mr. SORIENTI said that Mr. GIALLANZO was innocent, is that correct?

A. I really, off the top of my head, as far as him being innocent or not, that is, that subject never came up.

Q. When he returned the one gun to you, sir, would you please look at me instead of them?

A. I am looking at you, sir.

Q. When he returned the one gun to you, -

THE COURT: Would you please keep your voice down, Mr. Murphy?

Q. Sorry Judge. Did you ask him where the other two guns were?

A. I didn't ask SORIENTI, no.

Q. Did GIALLANZO tell you he didn't know anything about the other two guns?

A. Yes, he did.

Q. SORIENTI tell you that GIALLANZO had nothing to do with this?

MR. HUGHES: Your Honor, I object to that question, it has been answered three times.

THE COURT: Objection is sustained.

Q. At any time yesterday, did you discuss Mr. SORIENTI with the United States Attorneys present in this court room?

A. No, sir.

Q. Where did you see Mr. SORIENTI?

A. Yesterday?

Q. Yes.

A. I saw him in the court house here.

Q. Did you see him upstairs in the United States Attorney';s office?

A. Yes, I saw him upstairs, yes.
Q. When he was upstairs, who was he with?
A. He appeared to be alone at that time.
Q. At no time were any United States Attorneys with him?
A. The United States Attorneys were busy going back and forth to their office, we were out in the hallway.
Q. But you know that Mr. SORIENTI was subpoenaed up here by them?
A. (No oral response).
Q. Is that correct?
A. I assume he was when his presence was right there in the hallway.
Q. Was he up in the United States Attorney's office?

MR. HUGHES: I object, Your Honor, this question has been answered.

THE COURT: We will allow the question.

REPORTER: Your answer, I didn't get your ans

A. My answer? Was he inside the United States Attorney's office? I am not aware of this because I didn't have him under custody, I wasn't shadowing him around. He could quite well have gone to the bathroom or gone elsewhere, I don't know.
Q. At any time, did you see him up in the United States Attorney's Office?
A. In the office, proper, no.
Q. How many times did you talk to Mr. SORIENTI?
A. Serious conversation concerning the case, on that one

occasion down in New York on October 16th.

Q. At any time did he ever tell you that Mr. GIALLANZO had anything to do with this and was nothing other than innocent?

A. The day I interviewed him?

Q. "Yes" or "no", please.

THE COURT: Well, it's a double-barreled question, Mr. Murphy.

Q. I will withdraw the question, Judge. You have never had conversation with Mr. SORIENTI here?

A. Perhaps a casual conversation out in the hallway where we all were waiting at this time.

Q. Did you ask him anything about testifying for the Government?

A. No, sir.

Q. It is your testimony that you were not present when the United States Attorneys were talking to him?

MR. HUGHES: Your Honor, I object, as there is no testimony in this case, - -

A. That's true.

MR. HUGHES: Mr. Reilly has not stated that he knew or was aware they were there, there was any talk to the United States Attorney. As a matter of fact, about 7 times he has said he didn't know.

THE COURT: We understand what his testimony is but we will allow the question.

Q. Your answer is, "no"?

A. My answer is "no", yes.

MR. MURPHY: I have no further questions.

MR. HUGHES: I have no questions, Your Honor.

THE COURT: I believe you are excused, Mr. Reilly.

MR. REILLY: Thank you, sir.

(The witness, having been excused, withdrew from the stand)

S-T-E-P-H-E-N C. D-U-R-B-O-R-O-W, having been called as a witness by the Government, was duly sworn by the Clerk and testified on his oath as follows:

DIRECT EXAMINATION BY MR. NEIDERMEIER:

Q. Would you state your name please, sir?

A. Stephen C. Durborow.

Q. Where do you live?

A. Burlington, Vermont.

Q. How old are you?

A. 20.

Q. And what is your occupation?

A. I am a student at the University of Vermont.

Q. Now, on September 20, 1975, were you working at Clapp's Sporting Goods Store?

A. Yes, sir, I was.

Q. Where is that located?

A. Brattleboro, Vermont.

Q. On September 20, 1975, did you see anyone in the store that you see in the courtroom today?

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A. Yes, sir, I do.

Q. Would you please identify that person?

A. The gentleman sitting over at the table with a blue suit on.

MR. NEIDERMEIER: Your Honor, may the record reflect that the witness has identified the Defendant?

THE COURT: Yes, go ahead.

Q. Now, when did you first see the defendant?

A. The first time I saw him was on September 20th in the store when I was working there.

Q. Did you see anyone else with him?

A. Yah, there was another gentleman with him and there were two other people with him, actually.

Q. And what did you see the defendant do when he entered the store?

A. I was standing over behind the gun counter, both the defendant and the two people with him, accompanied him over to where I was.

Q. What did the defendant say or do?

A. Well all three of them were interested in looking at some different fire arms and things like that. I showed him the case, pulled out several different pieces, showed him how they worked, different features of them and things like that.

Q. Did you see the defendant pick up any of the guns that you were showing him?

A. Yes, he did.

Q. What did he do?

A. Well, one of the smaller pieces that he had picked up and looked at it, showed him how this particular one worked, felt it in his hand for grip size and things like that, also siding entry size, see how well the gun would fit.

Q. Did you see anyone purchase any guns?

A. Yes.

Q. How many guns were purchased from you?

A. Two.

Q. And what were the caliber of those guns?

A. One was a .38 and the other was a .22 magnum.

Q. What type of guns did you see the defendant looking at?

A. We had looked at several different calibers ranging in .22's up to .45's.

Q. Did he at any time select a gun?

A. Yes, he did, sir.

Q. What type of gun did he select?

A. It was a .38 small frame .38.

Q. Did he ever tell you why he wanted a .38?

A. No.

Q. Are you required to complete a fire arms transaction record when someone purchases a gun from you?

A. Yes, for every sale.

Q. So that day, did you complete a Fire ARms Transaction record for that .38?

A. Yes.

Q. You required to sign that form?

A. Yes, I am.

Q. I show you what's been marked and admitted into evidence as Government's Exhibit #2 and ask you if you can identify this?

A. Yes, this is a 4473 form for the .38.

Q. Your signature appear on that form?

A. Yes, it does.

Q. Does the transferee's signature appear on that form?

A. Yah, Mr. Clarence Parker.

Q. All right, who paid for this .38?

A. The defendant did. Clarence put some money down on the table which wasn't enough to cover the cost of the gun and the defendant pulled some money out and paid for the rest.

Q. Who carried the gun from the store?

A. I don't know.

Q. Any other guns purchased?

A. Yes, there was.

Q. What other guns were purchased?

A. .22 magnum Derringer.

Q YOu fill out a Fire Arms Transaction record for that gun too?

A. Yes.

Q. I show you what's been marked as Government's Exhibit #1 and admitted into evidence and ask if you can identify this?

A. Yah, 4473 form I filled out.
Q. Does your signature appear on that form?
A. Yes, it does.
Q. Is that the form you filled out for the .22 magnum?
A. Yes.
Q. Who paid for this gun?
A. The defendant paid for this one.
Q. Now, who walked from the store with these guns?
A. I took the guns up to the front of the store, finishing up the sale and put them in a brown paper bag and I cannot remember who walked out the store with them.
Q. Would you, if you can describe for the members of the jury what type or the size and shape of the .38 special that you have testified you sold?
A. .38 bought is a .38 Colt pistol, small frame with - approximately two, two and a half inch barrel.
Q. Now, did you ever say anything to the defendant while he was in your store, concerning taking any of these fire arms out of the state?
A. Yes, I did, I explained to all three who were standing at the counter that the guns could only be purchased by a Vermont resident and had to stay in the State of Vermont.
Q. The guns in working order when you sold them?
A. Yes.
Q. It is your testimony that the defendant paid for both of these guns?

A. Yes, he did.

Q. Your Honor, if I may just have one moment please?

THE COURT: Yes.

Q. Mr. Durborow I want to show you at this time, Government's Exhibit #4 which has been admitted into evidence and ask if you can identify this?

A. It is a .22 Derringer, mangum.

Q. Is that the pistol that you sold to the defendant on September 20, 1975?

A. Yes.

MR. NEIDERMEIER: Nothing further at this time, Your Honor.

CROSS EXAMINATION BY MR. MURPHY:

Q. Mr. DURBOROW how long have you worked at the Clapp's Department, Clapp's store?

A. I worked in there for approximately six months.

Q. By the way, how old are you?

A. I'm 20 now.

Q. And at that time, how old were you?

A. I had turned 20 in July of last year.

Q. I'm not familiar with the regulations here, are you allowed to sell guns when you are under 21?

A. Yes, you are.

Q. Okay now, you testified that the first time that you saw the defendant over there he was in the store with Mr. Parker and another man, is that correct?

A. Yes, sir, he was.

Q. Can you give me a description of the other person?

A. Oh, about five, eight, I'd say, weighed in about 135 pounds, sort of long hair down to about shoulder length, brown, brownish.

Q. Did you see the other person here?

A. (No oral response).

Q. No, not in the courtroom sir, have you seen him outside?

A. Yes, I have seen him outside.

Q. Do you now know his name to be GEORGE SORIENTI?

A. I also knew it before.

Q. YOu also knew it before. Okay now, when they came in to the store, Mr. Parker was with them, is that correct?

A. Yes, he was.

Q. And Mr. PARKER Indicate that he was purchasing the guns?

A. He was, he indicated to me he was using his signature on the Fire Arms forms, I assumed he was purchasing the guns.

Q. Well, the law says that the person who signed it has to be the person who is buying it, is that correct?

A. That's correct.

Q. And that they have to keep possession of it, is that correct?

A. That is correct.

Q. Now, is it your testimony that Mr. PARKER told you he was buying the guns but yet that Mr. GIALLANZO over there was looking at the guns, was trying them on, was holding them?

A. Could you repeat that, I'm not sure I understand your

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question, sir.

Q. Is it your testimony that Mr. Parker said he was buying the guns, but yet Mr. Giallanzo was the one who was holding the gun, who was trying it, feeling it in his hands?

A. He was purchasing the guns on, for his name, to be holding the guns for them, yes, he was going, - I was led to believe that he would be holding the guns.

Q. Well, who did you think was buying the gun, then?

A. I assumed Mr. Parker was, at the time.

Q. Now, how much did the .38 cost?

A. I have no idea.

Q. How much money did Mr. Parker put up for the .38?

A. $20.00 - $30.00, maybe. It wasn't, it was about, it wasn't enough to cover the cost of the gun, I can't say exactly how much it was.

Q. How much did Mr. Parker put up for the Derringer?

A. None.

Q. Who took the Derringer, Mr. SORIENTI?

A. He looked at the gun and decided he would like that one and took it, yes.

Q. Mr. SORIENTI, he is the one who took the Derringer, is that correct?

A. Are you asking if he took it out of the store?

Q. Yes.

A. As I said before, I don't know who took the guns out of the store.

Q. Well, Mr., Mr. Parker was signing for the guns and Mr. Parker was buying the guns, did you give the guns to anyone else?

A. I can't remember, sir. I bagged the guns at the counter and they were picked up and taken out.

Q. Did you ask them any questions concerning who was going to take the guns?

A. No, I didn't.

Q. It is your testimony, I believe, that you told them what the law was, concerning this?

A. Yes, I did.

Q. And what did Mr. Parker say at that point?

A. He told me he reassured me completely the guns would be staying in the State of Vermont.

Q. Would it refresh your recollection if I told you Mr. Parker said you never asked him any questions nor told him anything about that?

A. I would have to disagree sir, I made a habit, while I was working at the store to tell them, to tell people the laws.

Q. By the way, have you been given immunity?

A. No.

Q. Have you been arrested for this?

A. No.

Q. Now, you don't know what happened after they left the store, is that correct?

A. I have no idea.

Q. How many people were in the store while they were in there?

A. Just those three.

Q. Do you have camping equipment in the store?

A. Yes.

Q. You have fishing equipment?

A. Yes.

Q. In the store?

A. Uh huh.

Q. Was there any other people working in the store during this period?

A. Yes, there were.

Q. How many other people?

A. Four.

Q. Where does Mr. Parker live?

A. I believe he lives in Brattleboro.

Q. Do you know where he lives in Brattleboro?

A. Parker? Frost Street, I believe, I think that is on the form.

Q. Have you ever been to Mr. Parker's house?

A. Yes, I have.

Q. When? How many times have you been to Mr. Parker's house?

A. Once.

Q. Have you ever seen Mr. Parker before this date?

A. September 20th.

Q. Yes, before September 20th?

A. No.

Q. Where do you live in relation to Frost Street?

A. I lived approximately five miles south of Brattleboro.
Q. How did you get to work in the morning, drive?
A. Yes.
Q. You went to Mr. Parker's house after this incident, is that correct?
A. Yes, I did.
Q. How long after the incident?
A. About an hour or so later, I went to his house.
Q. Well, what was the purpose of going to his house, sir?
A. I had two purposes to go. One, during the transaction of the sales I had so much paper work sitting on the counter that I had forgotten to have Mr. Parker sign one of the 4473 forms. Also, I wanted, I went to advise him of a new law that the federal agencies come out with.
Q. When had the new law gone into effect?
A. I believe at the time, 3 or 4 weeks. It was a fairly new law.
Q. How many days a week do you work in the store?
A. I worked five days a week.
Q. And approximately how many guns do you sell in that store?
A. Depending on the season.
Q. Per week?
A. Per week?
Q. Around September, say, for the five weeks before September?
A. Maybe one a week.
Q. Now were you apprised of the new law?

A-224



A. Yes, I was.

Q. September 20?

A. Yes, I was.

Q. Now, what is the new law, what does it state, by the way?

A. A person cannot buy more than one gun within five business days or within five consecutive business days.

Q. However, you sold Mr. Parker two guns?

A. Yes, I did, I had forgotten about the law.

Q. And then subsequent to that, you drove to his house, is that correct?

A. Uh huh.

Q. By the way, how many forms did Mr. Parker fill out when he purchased these guns?

A. Two.

Q. How many other forms were filled out?

A. There is a registration book of inventory of guns that I have to sign out and plust the fact that I filled out two sales slips.

Q. Okay, Mr. Parker give him the sales slip?

A. Yes, he was.

Q. Now, when you got to his house Mr. Parker tell you that he didn't have the guns?

A. Yes, he did.

Q. Did you go to the police department and report it?

A. No, I didn't, I went back to the store and reported it to my proprietor of the store.

Q. By the way, did you - when did you discover that this new

law was not conformed with?

A. The proprietor of the store reminded me of it.

Q. Did you call Mr. Parker?

A. No, I went directly to his house.

Q. You never tried to call him?

A. I had his address, I figured it would be easier.

Q. Is there a telephone in the sporting goods store?

A. Yes.

Q. When you drove out to his house where did he tell you the guns were?

A. He didn't know.

MR. MURPHY: I have no further questions.

THE COURT: Does the Government have any re-direct?

MR. NEIDERMEIER: No, Your Honor.

THE COURT: That is all. We will recess at this time. Do you desire to have any further questions of Mr. Durborow?

Mr. MURPHY: Excuse me, Your HOnor?

THE COURT: Do you have any desire for further questions of Mr. Durborow?

MR. MURPHY: No, I don't want to retain him.

THE COURT: Very well, you are excused.

(The witness, having been escused, withdrew from the stand)

RECESSED FOR LUNCH AT 11:55 A.M. UNTIL 1:30 P.M.

SECOND DAY - AFTERNOON SESSION

MR. MURPHY: May I approach the Bench with

counsel?

THE COURT: Yes.

(AT THE BENCH, OUT OF HEARING BY THE JURY, OFF THE RECORD)

The conference at the Bench having been completed, all counsel resumed their normal seats.

MR. NEIDERMEIER: At this time the Government would move for the admission of Government's Exhibit 5 and 5A, certified copies that Clapp's Storting Goods Store is a registered fire arms dealer and Government's Exhibits 6 and 6A which again, are certified copies that is GALANES & SONS are also registered fire arms dealers with the Department of Treasury.

MR. MURPHY: I have no objections of them going into evidence.

THE COURT: Very well, the Government's #5 and 51, 6 and 6A may be received as certified copies of the registration of both stores, Clapp's and Galanes.

MR. NEIDERMEIER: That is correct, Your Honor.

THE COURT: Very well.

MR. NEIDERMEIER: At this time the Government would rest, Your Honor. (1:36 p.m.)

THE COURT: Is the defendant ready to proceed?

MR. MURPHY: Your Honor, may I approach the Bench again?

THE COURT: Yes.

(AT THE BENCH, OFF THE RECORD)

THE COURT: The Court has some motions involving

questions of law to be considered. It won't be necessary for the Jury to hear these matters and so you will be allowed to return to the jury room until the Court has ruled on the questions that are about to be presented.

(AT THIS POINT, THE JURY WITHDREW FROM THE COURT ROOM)

THE COURT: You may proceed, Mr. Murphy

MR. MURPHY: Your Honor at the end of the Government's case, the Defendant's first motion is for a consolidation of Counts 1, 2 and 3 into one count and for a consolidation of 4, 5 and six into one count and for a consolidation of 7, 8 and 9 into one count.

I cite for the Court the case of The United States versus KINLEY, 518, Federal Second 665.

THE COURT: 52

MR. MURPHY: 518 Federal Second, 665, in which the circuit, the 8th circuit court stated that the possession of two guns was only one crime, that the legislative intent to be considered in this matter is that if two or more items are carried at the same time that that only constitutes one crime unless the legislative intent is to the contrary.

I believe, Judge, in this matter, it is not to the contrary. I further cite a case that was cited in that case in which states the principle concerning legislative intent and that's McFARLAND v. PICKETT, 469 Federal Second 1277.

There is another case, Your Honor, although I don't have the cite with me, I didn't know I was going to be in this position immediately, I have it somewhere in my file,

it's United States versus BURBEE. If Your Honor is going to reserve decision on these motions I may be able to find it by the end of the day.

My second motion Judge, is for a directed verdict of acquittal.

THE COURT. Do you wish to argue that motion other than, -

MR. MURPHY: Well, Judge, I would prefer not to argue it at this point.

THE COURT: You don't have the particular citation for BURBEE?

MR. MURPHY: I do have it but if you want to give me five minutes, I have a lot of paper in here and if you just give me a few minutes maybe I can find it.

THE COURT: Well, we'll reserve on that until you have had an opportunity to locate the particular citation you rely on. You don't have your motion to consolidate the various counts in writing, do you, Mr. Murphy?

MR. MURPHY: No I do not, Your Honor.

THE COURT: Well I will ask you to re-state it ther, so that I will make sure that,....

MR. MURPHY: Your Honor, at this point, I move to consolidate Counts 1, 2 and 3 into one count and counts 4, 5 and 6 into one count and counts 7, 8 and 9 into one count, also, constituting three counts in place of the nine counts.

I am citing as far as that is concerned, Your Honor, McFARLAND versus PICKETT 469 Federal Second, 1277 in which

the courts state that unless the legislative intent is clear, then only one offense occurred, when you have transportation of weapons or something to that effect, as we have in this situation.

The United States versus KINLEY, 518, Federal Second, 665, 8th Circuit case in 1975, in which it is stated that a possession of two guns constituted only one crime. I believe that case dealt with a prior offender possession of weapons and the fact that he possessed two weapons constituted only one offense and not two.

I believe, Your Honor, in this situation, we have an identical situation, although we have no cases in this circuit on it that what the evidence that has been brought before this Court is that three weapons were purchased and they were purchased at the same time, that three weapons were allegedly transported across State lines at the same time and that the falsifying of the documents occurred at the same time in regard to three and I believe that under the cases, the only case that I could find on this topic, it could only constitute one offense for each of the three and therefore, leaving a total of four counts in lieu of ten counts.

THE COURT: We will note your motion, Mr. Murphy.

MR. MURPHY: Your Honor, I am also making a request, in view of the fact that the Government is, first of all, may I at this time recall WAYNE PARKER for further cross-examination?

COURT: Yes we will allow you to do that.

MR. MURPHY: My second request, Your Honor, is that I could have five minutes to talk to the gentleman from GALANES store, since the Government is not going to place him on the stand. It is my intention that maybe after talking to him that I would like to place him on the stand.

THE COURT: Very well, we will afford you that opportunity.

MR. MURPHY: Thank you very much.

THE COURT: We will take a very brief recess to permit you to avail yourself of that time.

It is the Court's ruling at this time that the Motion For Directed Verdict, is denied, however.

MR. MURPHY: Thank you, Your Honor. For the record, Your Honor, may I take exception?

THE COURT: Certainly.

(RECESS FROM 1:45 P.M. UNTIL 2:15 P.M.)

THE COURT: You may proceed, Mr. Murphy.

MR. MURPHY: Your Honor, at this time I request permission of the Court to recall WAYNE PARKER.

THE COURT: You may.

WAYNE PARKER, having been recalled as a witness by the Defendant, was reminded that he was still under oath and further testified on his oath as follows:

RECROSS EXAMINATION BY MR. MURPHY:

Q. Mr. Parker, when you first saw the car that Bobby was in, you were standing outside the Corner Market, is that correct?

A. That's correct.
Q. Now, were there any cars parked there outside the market?
A. No.
Q. Did they pull the car, was the car that Bobby was in, pulled into the curb?
A. Pretty close.
Q. Did you have a conversation with him there?
A. Yes.
Q. Did you get in the car?
A. Not right there.
Q. Isn't it a fact that you testified previously that you told them to pull the car around into the Holstein parking lot around the corner?
A. That's correct.
Q. How long have you resided in Brattleboro?
A. Five to seven years.
Q. Do you remember testifying in the Grand Jury on page 5 that, "I don't have a Vermont driver's license, because I moved from the State of New Hampshire just recently into Vermont so I don't have one yet"?
A. That's correct.
Q. That's correct too? Okay, I've got no questions.

REDIRECT EXAMINATION BY MR. HUGHES

Q. Now you stated you have lived in Brattleboro five to seven years, is that correct?
A. Yes.
Q. Did there come a time you moved out of Brattleboro?

A. Yes, I moved to Keene.

Q. When was this?

A. About 1971.

Q. Okay, when did you live in Brattleboro?

A. I moved back the last part of 1971.

Q. So you were in Brattleboro from 1971 until the date of this occurrence?

A. Yes.

Q. Okay, I have no questions.

MR. MURPHY: I have no further questions, Judge.

THE COURT: That is all, Mr. Parker.

MR. PARKER: Thank you, sir.

(The witness, having been excused, withdrew from the stand)

MR. HUGHES: May Mr. Parker be excused?

MR. MURPHY: I am not going to recall him, so I have no objections.

THE COURT: Yes, Mr. Parker may be excused.

MR. HUGHES: Is there any need for Clarence Parker?

MR. MURPHY: No, I have no need for Clarence Parker, either, Your Honor.

THE COURT: Very well, both Clarence and Wayne Parker may be excused.

(Messrs WAYNE and CLARENCE PARKER withdrew from the court room)

MR. MURPHY: Your Honor, at this time the defense calls Mr. PHILIP GALANES.

P-H-I-L-I-P J. G-A-L-A-N-E-S, having been called as a witness by the defendant, was duly sworn by the clerk and testified on his oath as follows:

DIRECT EXAMINATION BY MR. MURPHY:

Q. Mr. Galanes, were you subpoenaed here by the Government to testify in this matter?

A. Yes I was, sir.

Q. Mr. Galanes, I show you a form that is marked Government's Exhibit #3, is that your signature on that form, sir?

A. Yes, it is, sir.

Q. Thank you, very much. This is for the sale of a fire arm, is that correct?

A. Yes, sir.

Q. All right, to whom did you sell this gun?

A. Mr. Parker, I think, I'm not sure of his first name but on there it is Clarence.

Q. Clarence Parker?

A. Clarence Parker.

Q. Did Mr. Parker have a discussion with you concerning the price of the gun?

A. Yes, sir.

Q. Did he tell you that he wanted the gun at a lower price?

A. Not this particular gun, another one he was looking at.

Q. Did he ask you to reduce the price on one of the guns?

A. Yes, he did, sir.

Q. Did anybody else ever touch this gun that you were selling

him - that you sold him?

A. Not that I saw, sir.

Q. All right, did Mr. Parker carry the gun out of the store?

A. Yes, I would say "yes".

Q. Did you see the defendant seated over there?

A. Yes, sir, I'm sorry.

Q. Do you recognize him?

A. No, he doesn't ring a bell. No, I haven't seen him.

Q. Did you ever see him in your store before?

A. I, I don't know, I'm not sure one way or the other.

MR. MURPHY: I have no further questions.

CROSS EXAMINATION BY MR. HUGHES:

Q. Mr. Galanes, is that correct?

A. Galanes, yes.

Q. How many guns do you normally sell say, in a week?

A. 700 a year, that would be what, probably 20 during that time of the year, mostly long guns, not this one.

Q. Now, drawing your attention again to Government's Exhibit #3 you say you sold this weapon to Clarence Parker, is that correct?

A. (No oral response).

Q. You just testified to that, is that correct?

A. Yes, sir.

Q. How do you know it was Clarence Parker?

A. (No oral response).

Q. It's from reading that form again, isn't it?

MR. MURPHY: Objection, Your Honor.

THE COURT: Yes, but we'll allow the question.

Q. How do you know you sold it to Clarence Parker?

A. How do I know I sold it to him?

Q. Right, how do you know it?

A. He used identification, fishing license and if this is his signature and this is the right serial number, yes.

Q. Other than that you don't really remember? - Do you?

MR. MURPHY: Objection, Your Honor.

THE COURT: Yes, we will sustain the objection

A. Should I answer the question, Judge?

THE COURT: No, you needn't answer it in its present form.

Q. Do you remember what Mr. Parker looks like?

MR. MURPHY: Objection, Your Honor.

THE COURT: Objection over-ruled.

A. Right now I know before coming in to this meeting, I don't think I would have recognized him, no.

Q. Would you have recognized anyone else there if you hadn't see him before today, since then?

MR. MURPHY: Objection, Your Honor.

THE COURT: No, we will allow this.

A. I don't understand the question, sir.

Q. At this point in time, excuse me, at this sale, if anybody had been there, would you have recognized him?

A. I don't, - I didn't see any pictures in all the ones shown by Mr. Reilly, that I recognized, no.

Q. So really, about the only thing you remember, is -

MR. MURPHY: Objection, Your Honor.

THE COURT: Objection sustained.

Q. Do you remember anything in particular about this transaction?

MR. MURPHY: Your Honor, I am going to object to the form.

THE COURT: No, we will allow the question.

A. Is this going to be "yes" or "no" or explicit?

Q. First answer "yes" or "no" and then -

A. Nothing really. The guy was shopping and I, - Mr. Parker came in and I'm not sure if it was one or two other people. They looked at a high-priced Smith and Wesson revolver.

Q. So there were other people with him?

A. Yes, sir.

MR. HUGHES: I have no further questions.

REDIRECT EXAMINATION BY MR. MURPHY:

Q. You talked to anyone else other than Mr. Parker?

A. No, I don't believe I did.

Q. Was the money on the counter in front of Mr. Parker when you returned with the weapon?

A. With the box, sir?

Q. Yes.

A. Yes, it was.

Q. And Mr. Parker took the weapon out of the store?

A. I believe so, yes, sir.

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Q. And it was Mr. Parker who was haggling over the price of the gun with you, is that correct?

A. He was the only one that talked, yes, sir.

MR. MURPHY: I have no further questions.

RECROSS EXAMINATION BY MR. HUGHES:

Q. Mr. Galanes, do you know who put the money down.?

A. I have no idea. May I explain that sir? I showed him, - the person the gun and Mr. Parker said he would, if this was a lower price, that he would take it. So, we keep the boxes and guarantee over in a corner. I turned around and went over to get the box with the guarantee card and all that and came back and the money was on the counter.

Q. You stated that you guess that Mr. Parker took the gun out. Did you actually see someone take the gun out of the store?

A. No.

MR. HUGHES: I have no further questions.

REDIRECT EXAMINATION BY MR. MURPHY:

Q. Who was the money in front of on the counter?

A. Mr. Parker.

Q. Who did you hand the gun to?

A. It was on the counter, I believe Mr. Parker picked it up, I couldn't, ....

MR. MURPHY: I have no further questions.

MR. NEIDERMEIER: I have no questions, Your Honor.

THE COURT: That is all, Mr. Galanes.

(The witness, having been excused, withdrew from the stand)

R-O-B-E-R-T P. G-I-A-L-L-A-N-Z-O, having been called as a witness to testify in his own behalf, was duly sworn by the Clerk and testified on his oath as follows:

DIRECT EXAMINATION BY MR. MURPHY:

Q. Robert, how old are you?

A. 20 years old.

Q. Do you recall, -

THE COURT: What was the age?

A. 20.

Q. Would you speak up, please?

A. 20 years old.

Q. Do you recall going to Vermont or Maine with George SORIENTI on September 20th, 1975?

A. Yes, I do.

Q. Would you tell His Honor and the Jury where you left from on that evening and at what time?

A. Well, the night before we were at a bar drinking together.

Q. Do you remember the name of that bar?

A. Yes it's the Shell Back on Cross Bay Boulevard.

Q. What time, approximately did you get in there?

A. Well, it was around 9:00, 9:30.

Q. Now did there come a time when you decided to take a trip?

A. Yes, we were talking about it, of course he wasn't

working and I wasn't working and we were drinking and we decided to take a trip.

Q. All right. It was at that point in the bar that you decided to take a trip, is that correct?

A. Yes, sir.

Q. Did you call your parents?

A. Yes, sir.

Q. And what did you, what did you do?

A. Called my parents about 11:00 o'clock and I asked if I could go up to Vermont and they told me "yes" and I went home right after the phone call at about ten or fifteen minutes, we finished our beer.

Q. When you say, can you go up to Vermont, did you intend on going to Vermont at that time?

A. No, we didn't, we decided on going to Maine.

Q. All right now, subsequent to that, did you start out to come up here,to come not up here, but up to Maine?

A. I don't understand.

Q. All right, did you leave from New York?

A. (No oral response).

Q. Did you leave from New York in an automobile?

A. Yes.

Q. All right, whose car was it?

A. It was George SORIENTI's car.

Q. Approximately what time did you leave New York?

A. Around 3:30, 4:00 o'clock in the morning.

Q. Okay now, did you drive - do you remember how you came up?

A. I don't remember the road he took. He was driving most of the way. Well, he was driving all the way but I was sleeping most of the way.

Q. Okay now, did there come a time when you arrived in Brattleboro, Vermont?

A. Yes.

Q. Okay, would you tell His Honor and the Jury, exactly how you arrived in Brattleboro, Vermont, if you remember, and what happened after you arrived here in Brattleboro?

A. Like I said, I was sleeping while George was driving and when I opened my eyes, we were in this town.

Q. Did you stop any time before you got here?

A. Yes, we stopped on the road too and went to bed.

Q. Now, you arrived here in Brattleboro, Vermont?

A. Yes.

Q. All right, do you know approximately what time you arrived here?

A. I believe it was around 9:00, or 9:30.

Q. All right, what happened after you got here?

A. Well, GEORGE pulled into the town of Brattleboro, I'm not sure of the name and he, as he pulled across the street, from the coffee shop and he says, "Let's go get some coffee," and he says, "I'll wait in the car." I got the coffee to take out, because we were all a mess from sleeping in the car and also I went inside the store and I bought two cups of coffee and some

doughnuts and I came out of the store about five or ten minutes later and George wasn't in the car. I walked over to the car and see nobody in the car. I opened the door and I put the coffee in the car and was standing by the car looking around for him.

Q. Did you see anyone at that time?

A. Yes.

Q. Who, if anyone, did you see?

A. I seen WAYNE PARKER.

Q. Which one, do you know which or WAYNE is?

A. Yes, I do.

Q. Okay now, did you, at any time, have a discussion with WAYNE?

A. No, I didn't. Did I have any discussion before I went into the coffee shop?

Q. No, after you got out of the coffee shop?

A. I was looking for George, standing by the car wondering where he went and WAYNE seen me standing on my car, opened the door, put the coffee in and he said, "Are you looking for your friend?" I says, "Yes." He says to me, "He went up the block with my brother." So I asked him "What did he go up the block for?" He says, "I don't know, he went in the sporting goods store." I says, "Do you know where the store is?" He says, "Right up the block a couple of doors down."

Q. What did you do at that time?

A. I started to walk toward the store when I heard somebody

yell out "Hi Wayne." I turned around and there was three people walking across the street towards him. One had on a yellow jacket.

Q. Can you give us a description or anything of the three of them?

A. I only seen them for a second. One guy had blond hair.

Q. Now, what did you do at that point?

A. I walked to the sporting goods store and I walked in looking for George and he was standing at the counter with the heavy-set Parker, Clarence, I think.

Q. All right now, what did you do while you were inside the store?

A. I walked up to George and I asked him what he was doing and he says to me, "Do you want to buy a gun?" And, I told him, "no." Then he says that he was looking at guns and I started walking around the store, looking around at things.

Q. Did you, at any time, look at any guns by the counter?

A. Yes, they were right in the counter.

Q. All right, then what then? You walked around the store, is that correct?

A. Yah, I started to walk around the store while he was looking at them with the Parker and about five minutes later, or a couple of minutes later, I'm really not sure, he called out and says, "Come on, let's go." I walked out from the aisle where I was looking at camping equipment I think it was and he says to me,

"Come on, let's go." He was standing at the front door with Parker.

Q. What happened after that?

A. Well, we walked out together and started walking toward the car. When we got up to the car and Clarence Parker took out a box out of a bag and handed it to George.

Q. What did George do with it, if anything?

A. George walked around and put it on the front seat of his car.

Q. All right, now, at that point, Clarence Parker say anything to you?

A. No.

Q. Did you subsequently give him a napkin with a phone number on it?

A. Yes, I did.

Q. How did that come about?

A. Well, after George put the box underneath the seat, he asked me if I was interested in buying a gun, that he knew where he could get them and all of this, so I told him "no" but he kept asking me questions, asking me if he could get me this, he could get me this, he could get me that, he told me he could get me cheap prices. So, I gave him a piece of paper so he would leave me alone. I put my name on the paper and put down a phony telephone numbers. As soon as I gave him the napkin, he walked away.

Q. Did you see where he went to?

A. Yes, he walked over to his brother, where his brother was standing up the block with the other fellows, he walked over to his brother and handed him the bag.

Q. What happened at that point?

A. At that point?

Q. Yes.

A. He walked back to us and asked, -- we asked him directions on how to get up to Maine.

Q. All right.

A. And he directed George to the highway. I'm not sure of the highway.

Q. All right now, subsequent to this, did there come a time when the officer REILLY here, came to your house?

A. Yes, he did.

Q .Did he inform you that he was there concerning guns?

A. Yes.

Q .Did you tell him that yes, George had purchased the gun but that you had never purchased anything?

A. Yes, I had told him, he had asked me if I knew anything about three guns that were bought in Vermont on such and such a date and I told him that I know nothing about it. The only thing I know, George had bought one gun. As far as everything else, I don't know, I had nothing to do with it.

Q. Do you know if George had a conversation with him?

A. Yes, I believe he did.

Q. Did you have a conversation with George after this?

A. I did, I asked him what is going on and he says to me that a fellow , I don't know, ATF, I believe it is, came to his house, two fellows and they asked him questions regarding the gun he had purchased in Vermont and I asked him if he said anything that I had anything to do with it. He told me that he told them that I had nothing to do at all to do with it.

Q. Did you have anything to do with it?

A. No, I didn't.

MR. MURPHY: I have no further questions.

CROSS EXAMINATION BY MR. NEIDERMEIER:

Q. Mr. GIALLANZO, you testified that you were in a bar on the 19th of September, at 9:00 o'clock, is that right?

A. Yes. I'm not sure of the time.

Q. What was, - where was that bar?

A. 164th Avenue, Cross Bay Boulevard.

Q. How old are you?

A. 20.

Q. How old were you last September?

A. 19.

Q. So you asked your mother to go to that bar?

A. Yah, I was.

Q. Did you ask your mother if you could go to that bar?

A. No, I didn't.

Q. But you called up your mother to ask her if you could go to Maine or not, is that right?

A. After, yah, well, I'll be gone for a couple of days.
Q. What time did you leave for Maine, 3:00 o'clock in the morning?
A. Around 4:00.
Q. In the bar from 9:00 until 4:00?
A. Well, I was in the bar from 9:00 until about 11:30, 11:00 or 11:30, then we left and went home to get some clothes, then returned back to the bar.
Q. You went home, got some clothes, then came back to the bar?
A. Right.
Q. Then when the bar closed, you left for Maine?
A. No, then we went to the diner to eat.
Q. What diner was that?
A. That was the SY Diner.
Q. And it's after you ate there, that you left for Maine?
A. Yes.
Q. How often had you done this before, leave at 3:00 o'clock in the morning, to go to Maine?
A. Never did it before.
Q. First time?
A. Yes.
Q. Then you did it because George said, "Let's go to Maine"?
A. No.
Q. Did it because you wanted to go to Maine?
A. I did it because we were drinking in the bar and the subject arose, then the both of us, - he was off from work, I was off from work, - had nothing to do and the

conversation came up and this is where we decided to go.

Q. You did it because you had nothing to do so you decided to leave at 3:00 o'clock in the morning to go to Maine?

A. We decided at 9:00 o'clock at night.

Q. But you left at 3:00 o'clock in the morning?

A. Yes.

Q. You slept the whole way?

A. No, I didn't sleep all the way.

Q. Where did you stop?

A. Where did I stop?

Q. Yes.

A. We didn't stop any place, just pulled over to the side of the road and went to bed.

Q. Who suggested this trip, George?

A. Well, to be honest with you, I really don't know how it came up between the both of us, we were talking about going away, you know, for a couple of days, we were going to go up-state. I don't know if it was him or if it was me, but it came up and Maine came up and we decided to go to Maine.

Q. When was the last time you had seen George before you saw him in the bar?

A. The day before.

Q. Did you say anything about going up to Maine then?

A. No, sir.

Q. It is your testimony that you arrived in Brattleboro, Vermont,

Q. Are you familiar with guns?

A. Not really.

Q. So while George was looking for a gun, you were just walking around the store, is that your testimony?

A. Yes, sir.

Q. YOu didn't look at any guns, you didn't touch any guns?

MR. MURPHY: Objection, Your Honor, it's been asked twice already.

THE COURT: Yes, some of it is repetitive, but we will allow it on cross-examination.

A. Would you repeat the question?

Q. It is your testimony you didn't even touch a gun?

A. Yes, sir.

Q. With all this going on, you were just walking around the store?

A. Yes, sir, I was looking around the store at certain things that they had in the store.

Q. Did you have a conversation with the clerk of that store?

A. No, sir.

Q. The clerk of the store never told you that if you were from out of state you couldn't buy a gun?

MR. MURPHY: Objection.

THE COURT: We will allow the question.

A. No, sir, I never had no conversation with him at all.

Q. So if the clerk testified that he saw you handle a gun, he is mistaken?

A. Yes, he is mistaken, or he is lying.

Q. And if he testified that you put money down on the counter to pay for a .38 that you bought in that store, he is also mistaken about that?

A. Either that, or he is lying.

Q. How much money did you have with you that day?

A. Around 75 or 80 dollars.

Q. How long were you going to Maine for?

A. Oh, one or two days.

Q. Well, when did you have to go back to work?

A. I didn't, I had the week off.

Q. The whole week off?

A. Yes.

Q. Did George have the whole week off, too?

A. I don't know if he had the whole week off. He was off at the time.

Q. And it is your testimony that George left the store and you left the store?

A. (No oral response).

Q. Is that right?

A. (No oral response)

Q. With him?

A. All three of us left the store, yes.

What was the name of that store?

A. I really don't know. I believe the name was, I believe the name of the store was Clapp's.

Q. Oh now you remember it's Clapp's?

A. No, I heard it in Court, that's the only time I

about 9:00 o'clock in the morning?

A. I'm not sure of the time, around 9:00, 10:00 o'clock, 9:30, I'm not sure.

Q. And you got out of the car to get coffee?

A. Right.

Q. You came back and George was gone?

A. Yes, sir.

Q. Did you look around for George?

A. Yes, I did.

Q. It is your testimony that you heard three people, including this person in the yellow/ski jacket call out "WAYNE", is that right?

A. I didn't hear three people, I heard somebody call out "WAYNE" and I seen the three people walk out, over to him. At that time I was leaving him to go to the sporting goods store.

Q. At that time you didn't even know his name, did you?

A. Whose name?

Q. Wayne's name?

A. No, sir.

Q. So, you didn't know who they were talking about, or to?

A. That's right, well, I heard him say, yell out, "Hey WAYNE" and he walked over to WAYNE and he started to talk to him. I assume his name was WAYNE at the time, I didn't know his name.

Q. From there, you walked into a sporting goods store?

A. Yes, sir.

Q. And you saw George in the sporting goods store?

A. (No oral response).

Q. Is that right?

A. I seen George and Parker in the sporting goods store.

Q. And then did you walk up to George and say, "George, what are you doing here?"

A. Yes, I did.

Q. What did he say?

A. He said he was buying a gun.

Q. What did you say?

A. I says, "What are you doing?" He says, "I'm buying a gun," and he says, "Do you want to buy one?" And I says, "No, I don't want to buy any gun." So with that he walked over to the counter where Parker was standing and I walked over to the counter with him and he was looking at guns and I started walking around the store.

Q. Did you ever ask him, "Let's get out of here, what are you buying guns for?"

A. No, I didn't.

Q. You looked at guns too, didn't you?

A. Sure, I looked at them, they were all over the store.

Q. In fact, you handled a gun, didn't you?

A. No, sir.

Q. You never touched a gun?

A. No, sir.

Q. You never put a gun in your belt?

A. No, sir.

remember it.

Q. George say anything to you when you walked out of that store?

A. When I walked out of the store? No, sir.

Q. Did he say he bought a gun?

A. No, sir.

Q. And from this store, you went back to the store, is that your testimony?

A. Yes, sir.

Q. You never went into another store?

A. No, sir.

Q. You went right back to the car?

A. Yes, sir.

Q. On the way back to the car did you ask George if he bought two guns?

A. No, sir, because the car was only about half a block from the store, or a block up from the store and we got to the car right away.

Q. When you got out of the car, you got into the car, is that right?

A. No, I walked over to the door and I seen Clarence Parker hand George a box.

Q. You asked George what was in the box?

A. No, I didn't.

Q. You weren't interested?

A. It was none of my business at the time.

Q. So, it is your testimony that you rode up to Vermont at

3:00 o'clock in the morning, after agreeing to do it in a bar, you got in there, George goes into a sportin goods store, walks out with a package and you never asked him.....

MR. MURPHY: Objection, Your Honor.

MR. NEIDERMEIER: Well, I'm not finished with the question.

THE COURT: All right, go ahead and finish the question but it is pretty involved.

Q. You never asked him what he had done in there, whether he bought a gun or not?

MR. MURPHY: Objection, to the form, Your Hon

THE COURT: No, we will allow the question.

A. George did not walk out of the store with a bag.

Q. He didn't have the bag?

A. I did not ask him nothing to, until we got into the car.

Q. When you saw Clarence Parker, according to your testimony give George a brown box, - -

A. I didn't say "brown", I says, a box.

Q. A box, you didn't ask George what was in there?

A. At the time him and Clarence Parker were talking to each other, I was just standing by.

Q. And is that - after that happened is that when you went around to get in the passenger's side of the car?

A. No, the passenger's side is right toward the sidewalk

Q. So you just got in the car?

A. I was standing outside the car.
Q. You opened up the door and got in?
A. Yes.
Q. Then you left?
A. (No oral response).
Q. Is that right?
A. Well then WAYNE PARKER pulled out something, I don't know what he said, but I know CLARENCE PARKER walked over to him at the time and for about two or three seconds, I really don't know how long it was but he came right back to the car again and when he walked over he handed WAYNE PARKER the bag. He walked back to the car with it in his hand and he asked him, "How do you get to Maine from here," and he directed him to, he directed George how to go.
Q. You never asked George what all this was about, the brown bag?
A. At the time, no, sir.
Q. Is that because you knew what was in there?
A. No, sir, I had an idea what was in there.
Q. Is that because you in fact, purchased one of those guns?
A. No, sir, I didn't purchase one, I believe George told you yesterday in his office that I had nothing to do with it.
Q. Oh, were you in that office?
A. No, I wasn't.
Q. Did he tell you something that we don't know about?

A. I believe you do know about it.
Q. Well, what did he tell you?
A. He told me that you asked him questions and he told you that I had nothing to do with it.
Q. Did he also tell you - -
MR. MURPHY: Objection, Your Honor.
THE COURT: Objection over-ruled.
Q. Did he also tell you at that time that he was in our office we asked him what happened and he said he wouldn't tell us.
A. He told me.
Q. Did he also tell you that? "Yes" or "no"?
A. I would have to express, - I would have to explain the question.
Q. Would you answer it "Yes" or "no" and I'll be happy to give you an opportunity to (SIMULTANEOUS VOICES)
MR. MURPHY: Objection, Your Honor.
THE COURT: Yes, we'll allow the witness to answer.
Q. Did he also tell you that when he was in our office yesterday he was asked if he would tell us what had happened on that day and he said no, he wouldn't tell us. Did he tell you that, too?
A. Yes.
Q. He did?
A. Yes. Now, could I explain it?
Q. Sure, fine.

A. Okay, he says to me that "youse" called him up here, you subpoenaed him up here, he was in your office and youse asked him about me and he told youse that I had nothing to do with it at all. At that time, you told him that he should testify against me, otherwise, he is going to get so many years in jail.

Q. Did he also tell you that he was asked what happened on that day and he said, "I won't tell you". Did he tell you that?

A. No.

Q. He didn't tell you that?

A. No.

Q. All right. Now, you testified on direct-examination that WAYNE PARKER, I believe your testimony is, said that if you ever wanted to buy some guns he would know where he could get you some, is that correct?

A. No, I think that was CLARENCE PARKER?

Q. So it was CLARENCE PARKER who said that?

A. Yes.

Q. Clarence told you that?

A. Yes, he did.

Q. Weren't you concerned at that point as to what was in this box?

A. (No oral response).

Q. He was talking about guns, wasn't he?

A. Yes.

Q. Did you ever ask George if he had a gun?

A. I asked George when we got in the car and he told me.

Q. But you didn't ask George when CLARENCE PARKER was supposedly telling you that he could get you guns?

A. No.

Q. Did you tell CLARENCE PARKER you weren't interested, you didn't know anything about guns?

A. I told CLARENCE PARKER I didn't want to buy guns and I didn't want nothing to do with it and he kept telling me that he knew where he could get guns from and so on and so on. And then with that, I took out a napkin that I had from the coffee and wrote my name and phone number, telephone, the phony telephone number on it and once I gave him the napkin, he left me alone and walked away.

Q. Well, during this time did you tell George, "Come on George, let's get out of here, this guy's bothering me"?

A. This was all a matter of seconds.

Q. During this matter of seconds, CLARENCE PARKER was talking and talking to you about wanting to buy you some more guns and you never asked him anything about some more guns but rather took out a napkin and wrote your name and a phony telephone number on it and gave it to him?

A. No, sir, well, CLARENCE PARKER approached me when he came back with his brother, after talking to his brother and told me if I was interested in buying any guns he knew where he could get them, he would be able to get as many as I wanted, so on and so on and I told him I

wasn't interested when he told me this and just go get rid of him I gave him a number that didn't exist.

Q. But you gave him your right name, didn't you?

A. Sure.

Q. Where did you go from there, Maine?

A. We started out for Maine but we didn't reach Maine. We reached right before Maine, I'm trying to think of the name.

Q. Well, that is all right.

A. North Conway, I think it is, I believe it is North Conway, I'm not sure.

Q. During that time, from the time you left Brattleboro, at the time you got to North Conway, did you turn to George and say, "George, did you buy a gun?"

A. Yes.

Q. What did he tell you?

A. Yes.

Q. Did you ever ask him what type of a gun it was?

A. Yes.

Q. Did you ask him to take a look at it?

A. No, the gun was underneath the seat of the car.

Q. Whose seat?

A. Driver's seat.

Q. You never reached over and asked to take a look at it?

A. No, sir.

Q. Are you telling the members of this jury that you never went into GALANES Sporting Goods Store?

A. I'm saying that I went to one sporting goods store, I'm not sure of the name, I believe it's Clapp's? I'm not sure. I heard it in court, that's the only place I heard the name. That's the only sporting goods store I went into.

Q. And you never bought any guns, is that right?

A. Yes, sir. I believe George said that.

Q. He told you that?

A. I believe he told you, sir, and he told the special agent that.

Q. Here in the court room?

A. Excuse me?

Q. Here in the courtroom?

A. I believe he told the agent that when he went to his house.

Q. But you weren't there?

A. No, I wasn't, but after Agent Reilly came to my house, I wanted to know what was going on.

Q. Well, what did you tell Agent Reilly?

A. What did I tell him?

Q. Uh huh.

A. I asked, he asked me, he come in, he read me my rights, he asked me if I knew anything about three guns purcashed in Vermont and I told him I don't know nothing about three guns. I know George had bought one as far as anything else, I don't know.

Q. You told him you didn't know?

A. Yes.
Q. He -
A. I told him I had nothing to do with them.
Q. He asked you whether you knew anything about two .38's that were purchased?
A. Yes, he did.
Q. You told him "I don't know"?
A. (No oral response).
Q. Is that right?
A. Yes, sir.
Q. That was the extent of the conversation?
A. (No oral response)
Q. Was that the end of the conversation?
A. Uh huh. Was that the end of the conversation?
Q. Uh huh.
A. Yah, well he says that we'll be hearing from him, which I did. And that was about the end of the conversation.
Q. Did you tell him you didn't want to say anything else?
A. Did I tell him I didn't want to say anything else?
Q. Uh huh.
A. He asked me if I purchased guns. He was asking me questions about me and I told him what the truth was, which was/I know George bought one gun and that was it and he kept asking me questions and I told him, "Now listen, I have nothing to say," I told you what I had to say and that's the truth.
Q. With the Court's permission, may I have one moment, please?

THE COURT: Yes.

Q. Now Mr. Giallanzo, you testified when you came back to the car, George was gone. Up in Brattleboro?

A. When I came out from coffee, right.

Q. And then you went over to a store?

A. (No oral response).

Q. How did you know he was in that store?

A. I walked over to the car when I came out of the coffee shop and I opened the door of the car figuring that maybe he was sleeping under the seat, and I put the coffee in the car and he wasn't in the car. I was standing by the car looking around and WAYNE yelled out and he says, "What are you looking for your friend?" I says, "Yes, do you know where he is?" He says, "He went with my brother up the block." I says, "Where did he go?" He says, "Went up to the sporting goods store." I says, "Do you know what he went there for?" He told me, "I don't know."

Q. Did he tell you what sporting goods store he went to?

A. No, just says they went up the block.

Q. Well how did you know which one it was?

A. I believe it was the first one I came to.

Q. The first sporting goods store you came to?

A. Right.

Q. Happened to be Clapp's and there he was?

A. That's right, sir.

Q. And you walked in and looked around?

A. (No oral response)

Q. Is that right?

A. Yes, sir.

MR. NEIDERMEIER: I have nothing further.

REDIRECT EXAMINATION BY MR. MURPHY:

Q. Just one question. What is the extent of your formal education? How far did you go in school?

A. Ninth grade.

MR. MURPHY: I have no further questions.

THE COURT: You may step down.

(The witness, having been excused, withdrew from the witness stand)

MR. MURPHY: At this time the defendant rests.

(2:55 p.m.)

THE COURT: We will excuse the jury and I will take a brief recess and I will see counsel in Chambers with the Defendant.

IN CHAMBERS 3:10 p.m. All counsel and the defendant present.

THE COURT: I thought we could dispose of the various motions in here.

MR. MURPHY: Your Honor, at this time the Defendant would renew the two motions that he made at the end of the People's case, one for a consolidation and the other for a directed verdict of acquittal.

THE COURT: Do you wish to be heard on the consolidation motion?

MR. HUGHES: Yes, Your Honor. If it Please the Court, first I would like to indicate that the statute itself does not talk about one or more fire arms or two or more. It talks about any fire arm. Also the two cases that were cited by the defense counsel both concerned not transportation but possession and in the KINSLEY case, cited by the defense, the Courts specifically says in there that in a situation, in a case where we do not know if there were separate sales or we do not know whether they were obtained together or violate, then there has to be one count, but in that case they are talking about possession of stolen fire arms and there being insufficient evidence as to whether they were obtained together or separately, but the Courts specifically, in that case, upheld the proposition that when you can prove separate sales, distinct sales, then you have separate counts.

In the other and unless that case the Court is talking about not in the context of consolidation but in the context of sentencing.

Also in the other case cited by the defense counsel McFARLAND v PICKETT again it is a possession case, again, the Court talked about the inability to determine whether they were obtained together or separately, separate transactions.

Here, there is no question that we have separate transactions and I think that to allow consolidation puts an insurmountable burden on the Jury because they have heard testimony of three separate fire arms of transportation and

of purchase and falsification of records concerning three separate fire arms to consolidate those counts would make it impossible for the Jury to determine if they are considering one, all three, two. It is going to be impossible and I think under the law, under the cases cited by the defendant, that a separate count is proper for each fire arm if they can be distinguished and in this case I would submit to the Court they can be distinguished. The testimony is to that effect.

MR. MURPHY: May I be heard, Your Honor?

THE COURT: Yes.

MR. MURPHY: Well, Your Honor, I believe that the Government's argument concerning the question of possession as being distinguished from transportation would only fortify the defense's argument even more, so that if they are saying that in possession cases, yes, then you should have them consolidated in that case, if the possession is simultaneous, but in transportation that there should be separate counts for that, we would have a situation, Your Honor, if they are transporting 50 guns there would be 50 different counts in the case and the testimony that I have heard and I believe that Your Honor has heard the same testimony, you have the three guns being bought almost simultaneously, two of them being purchased at the same time, three of them being transported at the same time, according to the Government's witnesses.

Three of the, all three forms supposedly being written out at the behest of my client, with a ten dollar bribe in return for the performance of this matter by Mr. Parker and

I believe that in return for inducing him with one ten dollar bill, according to their testimony, to make out the three different forms and that three different"forms"are then transported to New York and I don't believe there is any testimony that they would, or were transported to New York in this case and I do believe that if all three of them were transported at the same time, assuming that we are going to come to some conclusion that they were transported to New York, that there is no way that we could possibly have three different counts.

It is, they are all three of them transported at the same time if ever, if they were ever transported to New York.

Furthermore, we have a situation here where the two of the guns were purchased in the same store at the same time and one was purchased in immediately thereafter, according to the Government witnesses.

Further arguing on the directed verdict, Judge, I believe there is ample testimony here and all of the credible testimony is on the defendant's side.

Judge, further requesting that the transportation counts be dismissed, there is no evidence whatsoever they were ever transported out of Vermont.

MR. HUGHES: Your Honor, if I just might comment on the last one which I haven't replied to, I think at this point if the motion is made that the count be dismissed in the light most favorable to the Government and with all

reasonable inferences, the jury can infer that these guns were transported to New York, there is ample evidence they were brought into a car registered in the State of New York.

The defendant told one of the Government's witnesses he was from New York, from Queens and gave him a number in Queens. The actual transportation in fact the defendant himself, testified that the gun was in the car at least the .22 and they went up to Maine and then they went back to New York, from his own mouth, that the .22 was transported, and I think there is reasonable inference the jury can draw that those other two guns, if they believe they were in the car, were also transported to New York.

MR. MURPHY: There is no testimony that the defendant ever went back to New York from Maine, that he was never brought up, he was left in North Conway up by Maine by the prosecution and I left him with going up there and never asked him anything further.

There was never any testimony out of his mouth that he ever returned to New York and that gun was ever in the car when they did return to New York.

I believe that what the Government, the inference that can be drawn that the Government is requesting is so remote that it is absolutely impossible for them to sustain their burden as far as that portion of the case is concerned, for sure.

MR. HUGHES: I also point out, Your Honor, that there has been testimony that the .22 was found in New York, so

there is no question that it was transported to New York.

Mr. murphy; That .22 was given by Mr. SORIENTI to the Government.

THE COURT: Is the file out on the Bench?

MR. MURPHY May I further state that what the Government is saying is, on one hand, the Government says yes, Mr. SORIENTI gave the gun back to them but Mr. SORIENTI says that no other guns were bought and he didn buy any other guns up here, therefore, they say, all right, we accept Mr. SORIENTI on this hand, he is right, they bought the gun down there. However, no, he is not right about this and we are going to draw an inference from that when there is absolutely no testimony whatsoever to draw that inference from.

THE COURT: The Defendant's motion for a directed verdict is denied. The charge of counts 1, 2 and 3 alleging violation of 922A3 and Section 2 of Title 18, which alleges the defendant did unlawfully transport .22 magnum caliber High-Standard Derring, .38 caliber Colt Cobra, .38 caliber Iver Johnson, are consolidated and will be treated as one count.

The basis of the Court's ruling is in addition to UNITED STATES against KINSLEY, I think this is implicit in the case of UNITED STATES against BAUGH. I'm sorry, BELL against THE UNITED STATES, 349 U.S. 81 at, cited in 1955. There of course, there was involved the transportation of two girls in violation of the MANN Act and it is my reading of the case as well as the statute that is here involved, the doctrine

of "Bell" applies.

I will also grant the motion to consolidate counts 3, counts 4, 5 and 6, which charges a violation of Section 922A5. Namely, that they aided and abetted and induced CLARENCE PARKER to transfer the weapons in question to him.

As I recall the evidence, it is substantially undisputed that CLARENCE PARKER retained possession of all the fire arms until they were placed in the back of and in the trunk of the motor vehicle occupied by the defendant GIALLANZO and operated by GEORGE SORIENTI and that they are all delivered into the vehicle, the New York State vehicle at one time. Other than, perhaps, an examination of the weapons at the Clapp's Sporting Goods Store and GALANES.

MR. NEIDERMEIER:: Your Honor, may I just -

THE COURT: No, the Court will deny the defendant's motion to consolidate counts 7, 8 and 9. The reason for consolidate of 4, 5 and 6, I think the same reasoning applies under the holding of BELL against UNITED STATES, as well as the second case of THE UNITED STATES against KINSLEY, Eighth Circuit and well, I think that is all the pending motions to be ruled on.

That leaves a 3 count indictment instead of a ten count indictment. I will hear you now if you wish to be heard. I didn't want to be interrupted while I was making my ruling.

MR. NEIDERMEIER: I'm sorry, but just on that counts 4, 5 and 6, I may be mistaken but it seems to me that

orally or in writing, stating



CLARENCE PARKER did testify that when the first two guns were purchased that at Clapp's, that the defendant had the two guns when he walked out of Clapp's. When they got out of Clapp's, and the defendant transferred the guns back to CLARENCE and said, "You'd better hang on to these."

THE COURT: Well I think it's, - you may be right about it, but I think the principle delivery was when all the three transaction were when all of the three guns were placed in the trunk of the vehicle, out on the, - according to the Government's case, on South Main Street, or Main Street in Brattleboro.

Does the defendant have any requests to charge?

MR. MURPHY: Well may we just, first of all, may I take exception to your ruling as to counts 7, 8 and 9 and an exception to your ruling denying my directed verdict for the record?

THE COURT: I think the defendant, according to the rules, you don't need it.

MR. MURPHY: All right, thank you. Now, are we going to sum up today?

THE COURT: I would like to have the Government start its summation. I'll hear the parties about that. I don't want to.

MR. MURPHY: Well, before we go out, would you tell me whether I am going to be directed to sum up today?

THE COURT: Well how long is the Government going to take?

MR. NEIDERMEIER: It is my understanding that the Court will allow thirty minutes? It is my first trial and whatever the Court allows, thirty minutes, fine for the Government but I would just make the point if summations are going to be started today, that it be completed today. I think they should be completed. It is difficult for the Jury to hear one argument today and one argument tomorrow.

MR. MURPHY: I don't believe he has a valid point there, he is going to be permitted under the rule to rebut anything I say, so if he conducts his summation at this time, it is now 3:30 in the afternoon, if he conducts his summation and I sum up tomorrow morning and then he has an opportunity tomorrow to rebut me on anything that I have brought up in that respect and I believe under those circumstances that that is certainly can be no objections.

THE COURT: How much time do you want?

MR. MURPHY: Judge, it is very difficult and almost impossible for me to limit myself to a half an hour and I would definitely request an hour. I believe there's been too many, too much testimony on the part of the Government and there are too many inconsistencies in their testimony and there are a lot of points that I didn't bring out to the jury in my cross-examination of the witnesses, that I think I can bring out in my summation and I think it is going to take me a while to elaborate on it. Furthermore, I realize there was no valid, legal argument but I was given a big stack of 3500 material and I was up until 3:30 in the morning reading it and to be

absolutely honest with you, I'm exhausted.

THE COURT: Well, I'll allow the case to proceed to argument tomorrow morning. I will allow each side forty-five minutes. Do you wish to divide your arguments?

MR. NEIDERMEIER: Your Honor, I anticipate thirty minutes on the first argument and fifteen on the second.

THE COURT: That is all right, we will allow you forty-five minutes. I do want to have the charge conference at this time, however.

MR. MURPHY: Well, Judge, can I hand in any requests tomorrow morning? I have some that are typed out now.

THE COURT: Tell me what they are.

MR. MURPHY: Well, can I go out and get them?

THE COURT: Yes, surely.

(Mr. Murphy withdrew from Chambers and returned)

DEFENDANT'S REQUEST TO CHARGE NUMBER 1:

Jury's Province to Determine Facts. We now come to that part of the case where the evidence is in, the lawyers have presented their arguments, and you are about to exercise your final role, which is to pass upon and to decide the fact issues that are in the case. You are the sole and exclusive judges of the facts. You pass upon the weight of the evidence. You determine the credibility of witnesses. You resolve such conflicts as there may be in the evidence and you draw such reasonable inferences as may be warranted by the testimony or exhibits in the case. I shall later refer to how you determine credibility of witnesses.

My function at this point is to instruct you as to the law that is applicable to the case. It is your duty to accept that law as I state it to you in these instructions, and to apply it to the facts as you find them. The logical result of that application is the verdict in the case.

With respect to any fact matter, it is your recollection and yours alone that governs. Anything that counsel, either for the Government or the defense, may have said with respect to matters in evidence during the trial, in questions, in colloquy with the Court, in argument, or in summation, is not to be substituted for your own recollection of the evidence.

So, too, anything the Court may have said during the trial, or may refer to during the course of these instructions, as to any factual matter in evidence, is not to be taken in lieu of your own recollection. The case must be decided by you upon the sworn testimony of the witnesses, any stipulations entered into among counsel and such exhibits as were received in evidence.

THE COURT: I think I will charge substantially your Request Number One, Mr. Murphy.

DEFENDANT'S REQUEST TO CHARGE NUMBER TWO:

The Conspiracy Counts. Now let us turn to Count Ten, the conspiracy charge. The indictment reads, (here, read Count Ten excluding Overt Acts). Before you may convict the defendant under Count Ten, the following essential elements must be established beyond a reasonable doubt:

First: You must find the existence of the conspiracy

charged.

Second: You must find that the defendant whose guilt or innocence you are considering knowingly and wilfully associated himself with the conspiracy and finally,

Third: You must find that one of the members of the conspiracy committed at least one of the overt acts set forth in the indictment at or about the time and place alleged.

If the Government fails to establish each essential element beyond a reasonable doubt as to a particular count, you must acquit the defendant on that point.

THE COURT: I will charge, in substance, the request as to conspiracy.

MR. HUGHES: Excuse me, Your Honor, what did you say?

THE COURT: I will charge in substance, the defendant's request to charge on the conspiracy count.

DEFENDANT's request TO CHARGE NUMBER THREE:

Admissions of a defendant are among the most effectual proofs in the law, and constitute the strongest evidence against the party making it that can be given of the facts stated in the admissions. Accordingly, you are entitled to give great weight to admissions of a defendant in this case and admissions against interest by any witness in this case.

If you find that a defendant made admissions, or that a witness in this case made admissions against his own interest, then you may give such admissions such weight as you believe they deserve after considering all the circumstances which were

brought out in the evidence.

MR. MURPHY: Your Honor, as to Request Number Three, I am going to withdraw that at this point. I had anticipated that Mr. SORIENTI was going to take the stand on behalf of the Government but being as he didn't, we will withdraw that.

THE COURT: Request Number Three is withdrawn.

DEFENDANT'S REQUEST TO CHARGE NUMBER FOUR:

Now, how do you determine the truth and how do you appraise the credibility of the witnesses? Well, you use your own plain, every-day common sense.

You have seen the witnesses. You have observed the manner of their testifying. Whatever credit you may give them must be determined by their conduct, by their manner of testifying, and by their relationship or interest in the outcome. In other words, you again apply your common sense and your every-day experience. You may, of course, take into consideration the interest of a witness. An interested witness is not necessarily unwrothy of belief. It is a factor, however, which you may consider in determining the weight and credibility to be given to his testimony.

If any witness has wilfully testified falsely to any material fact, you may disregard all his testimony or accept such part of it as you believe worthy of belief or as it appeals to your reason or judgment.

THE COURT: I think your Number Four Request is substantially, #4, well, maybe not in the exact language, but

substantially so.

GOVERNMENT'S REQUEST TO CHARGE NUMBER ONE:

The Court is requested to read or summarize the Indictment.

GOVERNMENT'S REQUEST TO CHARGE NUMBER TWO:

"Firearm" is defined in part as "A/ny weapon which will, or is designed to or may readily be converted to expel a projectile by the action of an explosive."

The term "dealer" is defined in part as "A/ny person engaged in the business of selling firearms or ammunition at wholesale or retail."

GOVERNMENT'S REQUEST TO CHARGE NUMBER THREE:

The statute on which the indictment is based reads in part:

It shall be unlawful for any person to transport into the State where he resides any firearm purchased or otherwise obtained by such person outside that State and,

It shall be unlawful for any person to transfer, sell, trade, give, transport, or deliver any firearm to any person who the transferor knows or has reasonable cause to believe resides in any State other than that in which the transferor resides.

It shall be unlawful for any person in connection with the acquisition or attempted acquisition of any firearm from a licensed dealer knowingly to make any false or fictitious oral and written statements intended or likely to deceive such dealer with respect to any fact material to the lawfulness of the sale or other disposition of such firearm.

When enacting this law, part of the State Firearms Control

Assistance Law, Congress stated:

Section 101. The Congress hereby declares that the purpose of this title is to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence, and it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trap-shooting, target shooting, personal protection, or any other lawful activity, and that this title is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes, or provide for the imposition of Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title.

THE COURT: Do you say that in fact, the clause or section of gun control act contained in Request Number Three, do you maintain that is pertinent?

MR. NEIDERMEIER: Are you talking about the first portion, Your Honor?

THE COURT: No, I am speaking about Section 101, law-abiding citizens.

MR. NEIDERMEIER: No, Your Honor.

GOVERNMENT'S REQUEST TO CHARGE NUMBER FOUR:

In order to sustain the charges in each of the first three counts of the indictment, the Government must establish beyond a reasonable doubt as to each count:

First: That the defendant on or about September 20, 1975 transported the firearms described in Counts 1 through 3 from Vermont to New York.

Second: That on or about September 20, 1975 the defendant resided in the State of New York.

Third: That the firearms described in Counts 1 through three of the indictment were purchased or otherwise obtained by the defendant on or about September 20, 1975 in the State of Vermont.

THE COURT: I don't think your, on your Request Number Four, it doesn't seem to me, unless you have betrayed me, that contains all of the essential elements of the offense charged under Count 3 as one through 3 is a consolidated count, I think that the knowingly and wilfully must be included. You have alleged or you have requested the Court to charge that they were transported and that the defendant resided in the State of New York and that it were obtained by the defendant on or about September 20, but I don't see anything in there about the defendant in doing so, he did wilfully or knowingly. I will revise it to include that.

MR. NEIDERMEIER: Okay.

THE COURT: I think substantially the rest of your request except as they are modified by the Court's ruling on that consolidation, I will charge.

GOVERNMENT'S REQUEST TO CHARGE NUMBER FIVE:

In order to sustain the charges in each of Counts 4 through 6 of the indictment the Government must establish beyond

a reasonable doubt as to each of these counts:

First: That on or about September 20, 1975, Clarence R. Parker did transfer or sell or trade or give or transport or deliver the firearms described in Counts four through 6 to the defendant.

Second: That Clarence R. Parker knew or had reasonable cause to believe that the defendant resided in the State of New York.

Third: That on or about September 20, 1975, Clarence R. Parker was not a resident of the State of New York.

Fourth: That on or about September 20, 1975 the defendant did aid or abet or counsel or command or induce or procure or cause Clarence R. Parker to transfer or sell or trade or give or deliver the firearms described in Counts 4 through 6 to the defendant.

Fifth: That the defendant acted knowingly and wilfully.

GOVERNMENT'S REQUEST TO CHARGE NUMBER SIX:

In order to sustain the charges in each of Counts 7 through 9 of the indictment the Government must establish beyond a reasonable doubt as to each of these counts:

First: On or about September 20, 1975 Clarence R. Parker did make a false or fictitious oral or written statement, i.e., he stated he was purchasing the firearms described in Counts 7 through 9 for himself.

Second: That said statements by Clarence R. Parker were made in connection with the acquisition of the foregoing described firearms.

Third: That said statements were intended and likely to deceive a gun dealer with respect to a fact material to the lawfulness of the sale or other disposition of the firearms.

Fourth: That the firearms described in Counts 7 through 9 were acquired from federally licensed retail gun dealers.

Fifth: That on or about September 20, 1975 the defendant did aid or abet or counsel or command or induce or procure or cause Clarence R Parker to make said statements.

Sixth: That the defendant acted knowingly and wilfully.

GOVERNMENT's REQUEST TO CHARGE NUMBER SEVEN:

Count TEN OF THE INDICTMENT - CONSPIRACY TO VIOLATE THE FIREARMS LAWS.

Count 10 of the indictment charges the defendant and others with conspiracy among themselves to violate the firearms laws. Count 10 of the indictment reads as follows: (Please read Count 10 of the indictment).

GOVERNMENT'S REQUEST TO CHARGE NUMBER EIGHT:

AIDING AND ABETTING. It is not necessary for the Government to show that the defendant physically committed the crime himself or personally did every act constituting the offense charged. Section 2 of Title 18, United States Code provides that a person who aids or abets or counsels or commands or induces or procures another to commit an offense is just as guilty of that offense as if he committed it himself. Accordingly, you may find the defendant ROBERT P. GIALLANZO guilty of the offenses charged if you find beyond a reasonable doubt that Clarence R. Parker committed the offenses in Counts 4 through 9

and that ROBERT P. GIALLANZO aided and abetted him.

To determine whether a defendant aided and abetted the commission of an offense, you must ask yourself these questions: Did he associate himself with the venture? Did he participate in it as something he wished to bring about? Did he seek by his actions to make it succeed? If he did, then he is an aider and abettor.

GOVERNMENT'S REQUEST TO CHARGE NUMBER NINE:

Conspiracy to violate the law relating to unlawful possession or receipt of firearms:

Congress enacted the Gun Control Act of 1968, in that year and made a finding: 1. That there is a widespread traffic in firearms moving in or otherwise affecting interstate or foreign commerce and that the existing Federal controls over such traffic do not adequately enable the states to control this traffic within their own borders through the exercise of their police power and, 5. That the sale or other disposition of concealable weapons by dealers holding Federal licenses, to non-residents of the State in which the lincensees' places of business are located, has tended to make ineffective the laws, regulations and ordinanaces in the several states and local jurisdictions regarding such firearms.

The Congress then set forth a comprehensive scheme of controlling unlawful possession and receipt of firearms in Chapter 44 of Title 18 of the United States Code. The Government charges in Count 10 of the indictment that the defendant violated that law in that he transported into the State of New

where he resided, firearms purchased or otherwise obtained by him outside that state; and that the defendant unlawfully aided and abetted in the acquisition of firearms from licensed dealers by making false and fictitious oral and written statements intended and likely to deceive said dealers with respect to facts material to the lawfulness of the sale and disposition of said firearms. The law relating to this charge has already been explained to you.

The Congress also made it unlawful to attempt to violate this law, or conspire to violate it. In Count Ten of the indictment, the Government charges the defendant and others with having conspired to violate this firearms law.

GOVERNMENT'S REQUEST TO CHARGE NUMBER TEN:

Conspiracy, sometimes called collective criminal agreement or partnership in crime, presents a greater potential threat to the public than the lone, wrong-doer.

It was because of these, and other reasons, that Congress made conspiracy, or concerted action, to violate federal law a crime, entirely separate, distinct, and different from the substantive law the violation of which may be the object of the conspiracy.

GOVERNMENT'S REQUEST TO CHARGE NUMBER ELEVEN:

In order to find the defendant guilty of conspiracy as charged in Count I of the indictment, you must find beyond a reasonable doubt:

First: That at some time during the period from on or about June 1, 1975, to December 11, 1975, an agreement existed

between at least two of the conspirators.

Second: That it was an object of this agreement to transport firearms from Vermont to New York or to aid and abet making false and fictitious oral or written statements in the acquisition of firearms.

Third: In order to find a defendant guilty of the crime of conspiracy, you will recall that I instructed you that guilt is personal - you must find, beyond a reasonable doubt, that the defendant knowingly associated himself with the conspiracy and participated in it.

Fourth: That one of the conspirators knowingly committed at least one of the overt acts set forth in the indictment, at or about the time and place alleged.

GOVERNMENT'S REQUEST TO CHARGE NUMBER TWELVE:

What is a conspiracy? A conspiracy is a combination, or agreement, of two or more persons, by concerted action, to accomplish a criminal or unlawful act by criminal or unlawful means.

The gist of the crime of conspiracy is the unlawful combination or agreement to violate the law. Whether or not the defendants accomplished what is alleged they conspired to do is immaterial to the question of guilt or innocence.

A conspiracy has sometimes been called a partnership in a criminal purpose in which each member becomes the agent of every other member. However, to establish that a conspiracy existed, the Government is not required to show that two or more persons sat around a table and entered into a solemn compact,

orally or in writing, stating that they have formed a conspiracy to violate the law, setting forth details of the plans, the means by which the unlawful project is to be carried out, or the part to be played by each conspirator. Indeed, it would be extraordinary if there were such a formal document or specific oral agreement.

Your common sense will tell you that when men or women in fact undertake to enter into a criminal conspiracy much is left to unexpressed understanding. Conspirators to not usually reduce their agreement to writing or acknowledge it before a notary public, nor do they publicly broadcast their plans. From its very nature a conspiracy is almost always characterized by secrecy, rendering detection difficult.

Thus, it is sufficient if two or more persons in any manner, through any contrivance, impliedly or tacitly, come to a common understanding to violate the law. Express language or specific words are not required to indicate assent or attachment to a conspiracy.

On the other hand, proof concerning the accomplishment of the objects of a conspiracy may be the most persuasive evidence of the existence of the conspiracy itself. To simplify this perhaps a bit more, success of the venture, if you believe it was successful, may be excellent proof of the venture or the agreement.

In determining whether there has been an unlawful agreement, you may judge acts and conduct of the alleged members of the conspiracy which are done to carry out an apparent criminal

purpose. The adage, "actions speak louder than words" is applicable here. Usually, the only evidence available is that of disconnected acts on the part of the alleged individual conspirators, which acts, however, when taken together in connection with each other and with the reasonable inferences flowing from them, show a conspiracy or agreement to secure a particular result as satisfactorily and conclusively as more direct proof.

If, upon such consideration of all of the evidence, direct or circumstantial, you find beyond a reasonable doubt that the minds of at least two of the alleged conspirators met in an understanding way and that they agreed, as I have explained a conspiratorial agreement to you, to work together in furtherance of the unlawful scheme alleged in the indictment, then proof of the existence of conspiracy is established.

Adapted from the charge of Judge Edward Weinfeld in UNITED STATES vs. KAHANER.

Again it is not necessary for the Government to prove the success of the conspiracy in order to establish a violation of the conspiracy statute. As a conspiracy is basically the agreement to violate the law it may exist even though the final objects were never accomplished.

The indictment charges that the conspiracy existed "From on or about June 1, 1975 and continued up to and including the date of the indictment", which was December 11, 1975. You need not find that the conspiracy began exactly on June 1, 1975, and came to an end on December 11, 1975. If you find that at some

time during this period which began about June 1, 1975, and ended about December 11, 1975, that the conspiracy existed, that will be sufficient.

GOVERNMENT'S REQUEST TO CHARGE NUMBER THIRTEEN:

Once satisfied that the conspiracy charged existed, you must ask yourself who its members were. In deciding whether a defendant was a member of the conspiracy, you should consider from all of the evidence whether that defendant knowingly and purposely entered the conspiracy.

In determining whether a defendant became a member of the conspiracy, you must determine not only whether he participated in it, but whether he did so with knowledge of its unlawful purpose. Did he join with awareness of at least some of the basic aims and purposes of the conspiracy?

Knowledge is a matter of inference from facts proved. It is not necessary that the defendant be fully informed as to details of the scope of the conspiracy in order to justify any inference of knowledge on his part. To have guilty knowledge, the defendant need not know the full extent of the conspiracy and all of its activities and actors.

I want to caution you that mere association with one or more of the conspiraTORS does not make one a member of the conspiracy. Nor is knowledge without participation sufficient. What is necessary is that the defendant participate with knowledge of at least some of the purposes of the conspiracy and with intent to aid the accomplishment of those unlawful ends.

GOVERNMENT'S REQUEST TO CHARGE NUMBER FOURTEEN:

All of the conspirators need not be acquainted with each other. They may not have previously associated together. One of the defendants may know only one other member of the conspiracy, but if he enters into an unlawful agreement with that other member of the conspiracy he becomes a party to the conspiracy.

GOVERNMENT'S REQUEST TO CHARGE FIFTEEN:

Once you have found the conspiracy to exist and the defendant to have knowingly participated in it, the extent of his participation has no bearing on his guilt or innocence. The guilt of a conspiracy is not measured by the extent or the duration of his participation. Even if he participated in it to a degree more limited than that of his co-conspirators, he is equally culpable so long as he was in fact a conspirator.

GOVERNMENT'S REQUEST TO CHARGE SIXTEEN:

Liability for acts and statements of co-conspirators.

You have heard testimony in this case concerning acts done and statements and declarations which are alleged to have been made by co-conspirators in furtherance of the conspiracy. Under the law you, of course, may consider these acts, declarations and statements, and all of the other evidence in the case in deciding whether these defendants are guilty of the conspiracy count. (Jury need not find proof aliunde; up to the Court only).

These acts, declarations and statements by co-conspirators may be considered against the defendants even though such acts, declarations or statements were made or done in the

absence of and without their knowledge. The theory behind this is that a conspiracy is often called a partnership in crime. Just as in other partnerships, when people conspire to accomplish an unlawful end they become agents for one another in carrying out the conspiracy. Hence, the acts, declarations or statements of one conspirator are deemed to be the acts of all and all are responsible for such acts, statements and declarations made during the pendency of the conspiracy and in furtherance of it.

GOVERNMENT'S REQUEST TO CHARGE NUMBER SEVENTEEN:

Now we come to the fourth element you must consider, assuming you have found that the conspiracy existed, and had as one of its objects the transportation of firearms from Vermont to New York or to aid and abet the making of false and fictitious oral or written statements in the acquisition of firearms, and that some or all of the alleged conspirators were members of it. The fourth requirement is that there be an overt act. You may not find a defendant guilty of conspiracy unless and until you are convinced that at least one overt act as charged in the indictment was committed by at least one of the conspirators.

The offense of conspiracy is complete when the unlawful agreement is made and any overt act is done by a conspirator to effect the object of the conspiracy. Hence, the overt act required is one which furthers the objectives or purposes of the conspiracy. It does not have to be a criminal act or an act which, of itself, constitutes an objective of the conspiracy;

it may be an act which is innocent on its face, but it must be of such character that it furthers or promotes or aids and assists in accomplishing a purpose of the conspiracy.

It is not necessary for you to find that all of the alleged overt acts charged in the indictment were committed. Nor is it necessary that an overt act implicates the defendant on trial before you. Nor do you have to find that all of the conspirators had something to do with the overt act committed. It is enough if you find that at least one of the named overt acts charged in the indictment was committed by any one of the conspirators in furtherance of the conspiracy.

GOVERNMENT'S REQUEST TO CHARGE NUMBER EIGHTEEN:

I will now read to you the overt acts which are charged in the indictment; the Government must prove that at least one of these overt acts were committed in furtherance of the conspiracy. (PLEASE READ THE LIST OF OVERT ACTS CONTAINED IN COUNT ONE OF THE INDICTMENT).

If you find that any one of these acts was done, and that it was done in furtherance of the conspiracy charged, then this requirement has been satisfied.

GOVERNMENT'S REQUEST TO CHARGE NUMBER NINETEEN:

Knowledge and intent exist in the mind. Since it is not possible to look into a man's mind to see what went on, the only way you have for arriving at a decision in these questions is for you to take into consideration all the facts and circumstances shown by the evidence, including the exhibits, and to determine from all such facts and circumstances whether the

requisite knowledge and intent were present at the time in question. Direct proof is unnecessary and in fact is impossible, usually. Knowledge and intent may be inferred from all the surrounding circumstances.

As far as intent is concerned, you are instructed that a person is presumed to intend the natural and probable, or ordinary, consequences of his acts.

GOVERNMENT'S REQUESTS TO CHARGE NUMBER TWENTY:

Some of the Government witnesses were admittedly participants in the crimes charged in the indictment. The Government frequently must use such testimony because otherwise it would be difficult or impossible to detect or prosecute wrong-doers.

The testimony of an accomplice is not to be rejected unless the jury thinks it has no weight. Like any other fact it is to be taken up and dealt with by the jury. By you, who are the triers of the facts. If accomplices could not be used, there are many cases where there is real guilt and where convictions should be had, where convictions would not be obtainable. Their evidence is properly considered by the jury. Their testimony must, however, be received with caution and weighed with care.

It is universal rule in the federal courts that defendants may be convicted on the uncorroborated testimony of an accomplice.

GOVERNMENT'S REQUEST TO CHARGE TWENTY-ONE:

The law permits a defendant at his own request to testify in his own behalf. The testimony of an individual defendant is before you. You must determine how far it is credible. The deep personal interest which every defendant has in the result

of his case should be considered in determining the credibility of his testimony. You are instructed that interest creates a motive for false testimony; that the greater the interest, the stronger is the temptation, and you may find that the interest of the defendant is of a character possessed by no other witness and is, therefore, a matter which may seriously affect the credence that should be given to his testimony.

GOVERNMENT'S REQUEST TO CHARGE NUMBER TWENTY-TWO:

An act is done knowingly if it is done voluntarily and purposely and not because of mistake, accident, mere negligence or other innocent reason.

An act is done wilfully if it is done knowingly and deliberately. Wilful does not mean that the defendant, in addition to knowing what he is doing, must also suppose he is breaking the law.

Ignorance of the law is no excuse, save in cases of mere failure to act.

GOVERNMENT'S REQUEST TO CHARGE NUMBER TWENTY-THREE:

Now how do you determine the truth and how do you appraise the credibility of the witnesses? Well, you use your own plain, every day common sense.

You have seen the witnesses, you have observed the manner of their testifying, and whatever credit you may give them must be determined by their conduct and their manner of testifying and their relationship or interest in the outcome. In other words, you again apply your common sense and your every day experience. You may, of course, take into consideration the

interest of a witness. An interested witness is not necessarily unworthy of belief. It is a factor, however, which you may consider in determining the weight and credibility to be given to his or her testimony.

If any witness has wilfully testified falsely to any material fact, you may disregard all his testimony or accept such part of it as you believe worthy of belief or as it appeals to your reason or judgment.

A witness may be discredited or impeached by contradictory evidence, or by evidence that at other times the witness has made statements inconsistent with the witness' present testimony. If you believe that any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves.

GOVERNMENT'S REQUEST TO CHARGE NUMBER TWENTY-FOUR:

You may not find the defendant guilty if you have a reasonable doubt about any of the facts necessary to constitute the crime; and reasonable doubt may be based on the evidence or the lack of evidence.

Now, what is a reasonable doubt? A reasonable doubt is such a doubt as would cause you to hesitate to act in a matter of importance in your own lives.

It is a doubt which a reasonable person has after carefully weighing all the evidence. Reasonable doubt is one which appeals to your reason, your judgment, your common sense and your experience.

Reasonable doubt is not caprice, whim or speculation. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for a defendant. Vague, speculative, or imaginary qualms or misgivings are not reasonable doubts.

It is not necessary for the Government to prove the guilt of the defendant to a mathematical certainty or beyond all possible doubt. If that were the rule, few men or women, however guilty they might be, would be convicted. The reason is that in this world of ours it is practically impossible for a person to be absolutely and completely convinced of any controverted fact which by its nature is not susceptible of mathematical certainty. In consequence, the law is such that in a criminal case it is enough if proof that a defendant is guilty if established beyond a reasonable doubt, not beyond all possible doubt.

If, after a fair, impartial and careful consideration of all the evidence, you are convinced of the guilt of the defendant, you must convict him. If, on the other hand, after such a fair, impartial and careful consideration of all the evidence, you doubt the defendant's guilt, you must acquit him.

GOVERNMENT'S REQUEST TO CHARGE NUMBER TWENTY-FIVE:

There are two types of evidence from which a Jury may properly find a defendant guilty of a crime. One is direct evidence, such as the testimony of an eye witness. The other is circumstantial evidence, the proof of a chain of circumstances pointing to the commission of the offense.

As a general rule, the law makes no distinction between

direct and circumstantial evidence, but simply requires that, before convicting a defendant, the Jury be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case.

GOVERNMENT'S REQUEST TO CHARGE NUMBER TWENTY-SIX:

Now, under your oath as jurors you cannot allow a consideration of the punishment which may be inflicted upon the defendant, if convicted, to influence your verdict in any way or in any sense enter into your deliberations.

The duty of imposing sentence rests exclusively upon the Court. Your function is to weigh the evidence in the case and to determine the guilt or innocence of the defendant solely upon the basis of such evidence and the law.

You are to decide the case upon the evidence, and the evidence alone, and you must not be influenced by any assumption, conjecture, or sympathy, or any inference not warranted by the facts until proved to your satisfaction.

GOVERNMENT'S REQUEST TO CHARGE NUMBER TWENTY-SEVEN:

If you fail to find beyond a reasonable doubt that the law has been violated, you should not hesitate for any reason to find a verdict of acquittal. But on the other hand, if you should find that the law has been violated as charged, you should not hesitate because of sympathy or any other reason to render a verdict of guilty as a clear warning that a crime of this character may not be committed with impunity. The public is entitled to be assured of this.

GOVERNMENT'S REQUEST TO CHARGE NUMBER TWENTY-EIGHT:

The most important part of this case is the part which you now, as jurors, are about to play because it is for you and you alone to decide whether each defendant is guilty or not guilty of the crimes charged. I know you will try the issues that have been presented to you according to the oath which you have taken as jurors in which you promised that you would well and truly try the issues joined in this case and a true verdict render. I suggest to you that if you follow that oath and try the issues without combining your thinking with any emotions, you will arrive at a just verdict. It must be clear to you that once you get into an emotional state and let fear or prejudice or bias or sympathy interfere with your thinking, then you don't arrive at a true and just verdict.

THE COURT: I will charge, in substance most of the Government's requests but I don't think we need to go over them further.

MR. MURPHY: If I may, is Your Honor going to charge in regard to conspiracy, I believe it is #11 in the charge pertaining to conspiracy being one of the most difficult

THE COURT: I hear you better in the court room Mr. Murphy.

MR. MURPHY: I don't have my copy of their requests to charge with me but there is one charge on conspiracy in which they say to the effect that it is one of the worst crimes in the world and I just believe it was inflammatory in nature, the entire charge and I don't believe it has any relevancy here to this case.

THE COURT: I will do as little of this guilding of the lilly as possible.

MR. HUGHES: Request #10 Your Honor, never charges that in substance, unfortunately.

MR. MURPHY: I was reading until 3:00 o'clock this morning and I am trying to - -

MR. HUGHES: Your Honor, -

THE COURT: I will charge something to the effect what the nature of the conspiracy is and without going into necessarily the congressional intent.

MR. NEIDERMEIER: Your Honor, the only point I would make on the instructions, I, since the elements of the punishment has been brought up that it is the province of the Court, not the Jury.

THE COURT: I normally don't charge it but I will in this instance because it was developed. I generally decline the Government's requests for protection of the public.

MR. HUGHES: As your former law clerk, you usually deny the last fifteen.

MR. MURPHY: That's another one.

THE COURT: Well, I am, I haven't completed the Charge yet but I will have, I will give, in substance, I will give to you in substance what I will charge and you will have plenty of opportunity to object and I will grant substantially your defendant's requests limited in number and reasonable. We will excuse the jury at this time and let's see, I think

because of the, - I want to get this case to the jury as soon as possible, - (OFF THE RECORD)

THE COURT: The record may show that the defendant has been present during the charge conference and the rulings of the court and motions at the close of the evidence.

(At 3:35 p.m. recessed until 3:40 p.m., at which time it reconvened in the court room with the jury present)

THE COURT: Members of the jury the evidence has now been closed and the Court has heard various motions advanced involving questions of law and since it is late in the afternoon rather than completing the trial this afternoon at this hour, we will excuse you until tomorrow morning at 9:00 o'clock. I say 9:00 o'clock because we want to get the case submitted to you very early in the day and you want to keep in mind it is a half hour earlier than the usual time.

It is very important at this particular time and it is always important but particularly at this stage of the trial, that you heed particularly the Court's instructions that I gave you regarding not discussing the case with any person or listen to any discussion of it or reading about the case in any way, or commit any violation of the rules made by the Court and at the Court's directions in this regard because serious, it may cause serious embarrassments or more importantly, it might cause the trial to be aborted and certainly none of us want that and it would be in violation of your oath which you have taken as jurors. So again, I want to remind you that, of those

cautionary instructions that I have given you at the outset of the trial and yesterday afternoon when you were excused and I re-emphasize it now because we are very late in the stage of the trial, the evidence is now closed and there remains just the arguments of the counsel and the instructions of the Court.

With that, we will excuse you until tomorrow morning at 9:00 o'clock and thank you for your attendance today.

This trial then at 3:42 p.m., 14 April 1976, adjourned until 9:00 a.m., 15 April 1976, at which time it was reconvened.

9:10 a.m.

THE COURT: Mr. Neidermeier? You may proceed.

MR. NEIDERMEIER: Thank you, Your Honor. Good morning, ladies and gentlemen. This is the last day of the trial and it is the time of the trial that is referred to as time for closing arguments. The time when the Government and the defense are allowed an opportunity to go over with you the evidence as you have heard to summarize with you the evidence and to indicate to you what we believe the evidence to have proved in this case.

The closing argument is such that the Government gives the first closing argument and the defense has an opportunity to respond and since the Government has the burden of proving beyond a reasonable doubt, the Government has an opportunity for what is called rebuttal to comments on the arguments made by the defense counsel.

In my closing argument to you I would like to begin by going over with you the witnesses that you have heard in this trial. There haven't been that many. The Government has presented four witnesses, but what have those witnesses told you?

As I go over this with you, I would ask you to think back and consider how each witness appeared to you when he testified. His demeanor on the stand. How did he look? How did he answer the question? Did he answer them truthfully to the best of his knowledge, or was he evasive, or did he appear to you to be not quite telling the truth or telling



HERMAN J. VESPER
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the truth his way?

You have heard testimony that on September 30, 1975, WAYNE PARKER a resident of BRATTLEBOR, VERMONT, standing on a street corner, was approached in a car of New York license plates by the defendant. and the first thing the defendant said is, "Where can we get some guns?" And WAYNE PARKER assisted him. Took him back to his brother CLARENCE because he knew CLARENCE had identification and he told the defendant and his friend he needed Vermont identification if you want to buy a gun in Vermont. It is the law. To come back to see his brother CLARENCE. CLARENCE agreed. Not for two dollars but for ten dollars. He became an accomplice. The Government doesn't contest this. The Parkers assisted the Defendant and his friend in purchasing guns. The Government doesn't contest it. It's not the Government that chose the accomplice, it's the Defendant and his friend, when he got there. They are the ones that selected the Government's witnesses.

So, CLARENCE agreed, for ten dollars, to assist the Defendant to buy guns. The defendant knew he couldn't buy guns himself because he was from New York.

So, he paid CLARENCE PARKER ten dollars to help them get some guns. They left from CLARENCE's residence and in the defendant's car and they went first to Sam's Army and Navy Store. That is the first sporting goods store up the street. It is not CLAPP's as the defendant will have you believe.

MR. MURPHY: Objection, Your Honor, there has been no testimony whatsoever as to that.



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THE COURT: The Court will instruct the Jury that statements of counsel and the arguments and their opening statements, is not evidence and you should not consider them as such. Now, apparently the party defendant and the Government are in dispute as to a certain fragment of the testimony in this case. You are to decide what the testimony indicates. It is not what the counsel for the Government says, nor counsel for the defendant but you - it is your recollection of what the evidence was on this particular point that will govern you in reaching your verdict. You may proceed.

MR. NEIDERMEIER: Thank you, Your Honor. What happened when they went into Sam's? The defendant told the Clerk he is looking for a gun for target practice. When he described the gun he wanted, the clerk got a little suspicious. He walked out. Then what happened? He went to Clapp's and what happened in Clapp's?

The defendant went in there, saw a .22 that George would like, went back out after selecting the gun that he thought George would like and came back in.

What did he do when he got back there? He went and he got a .38 for target practice. A .38, short-barreled .38. And, what did Stephen DUBUROW tell you? He was the student who was a clerk there at that time. He told you that he positively identified the defendant. That is him. That is the person that came in to Clapp's and that is the person who picked up the gun, who gripped it open, who checked it, who fitted it in his belt and said that is the gun I want, and



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paid for it. According to the defendant, according to his testimony, he walked in and looked around. Didn't touch any gun. You will recall he told you that I didn't touchany gun. That is not what Stephen DUBOROW told you that the defendant did and he positively identified the defendant. That's him, and, that's what he did. But, in order to get that gun, that .38, in order to get that, that .22, CLARENCE had to sign because CLARENCE had Vermont identification. Because, the defendant had already been told by Stephen DUBOROW that you can't take the gun out of the State and had already been told by the PARKERS that you need VERMONT Identification to get a gun. It was going to be the defendant's guns. But for ten dollars, he induced CLARENCE PARKER to sign his name on that form because he knew he couldn't do it. He knew it was wrong. He knew he couldn't do it. He knew it was wrong. That's why he paid CLARENCE PARKER ten dollars.

Now, who carried the guns from the store? The defendant carried the guns from the store but when he got outside, he thought about it and then gave the guns to CLARENCE. Because CLARENCE had signed for them. He knew it was wrong and he did it any way.

Where did they go from there? To GALANES. What happened in GALANES? Whose idea was it to go to GALANES? Bobby wanted another gun. Bobby wanted another .38 for target practice. Target practice. And what happened when they went in there? Bobby looked at guns. Bobby tried on a shoulder holster for target practice. Bobby paid for the gun. Another .38, and



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for ten dollars, CLARENCE PARKER signed the form, because Bobby couldn't sign the form, the defendant couldn't sign it. He knew he couldn't sign it. He knew that it was wrong. He knew that he was going to be wrong, but he did it any way.

Then they left the store. Went back to the car. CLARENCE has the guns now. The trunk is opened up and what does the defendant do? He says CLARENCE Put the guns in the trunk. The defendant says that. Put the guns in the trunk. In the trunk of my car. Put the guns in the trunk. And then the deal is complete, the defendant pays CLARENCE PARKER two ten dollar bills. One for himself and one for his brother WAYNE. He pays them off. The defendant gets his guns. The defendant got his guns and leaves the State. Leaves two brothers back there, after paying them ten dollars a piece and goes back to New York.

I submit to you ladies and gentlemen, that the witnesses called by the Government told you what really happened down there. They've got no reason to lie.

The Government doesn't contend that the PARKER brothers, WAYNE and CLARENCE are the best people in the world. They have violated the law for ten dollars. The Government doesn't contest that. Apparently they needed the ten dollars. But the defendant induced them with that ten dollars to violate the law.

The defendant knew what he was doing was wrong but he did it any way.

I submit to you the PARKERS, as they appeared to you



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on the stand are simple and uneducated people. They had a chance to make ten dollars and they thought they could do it but the told you the truth. In fact, when they were told by STEPHEN DUBOROW they may have violated the law, what did they do? Did they run back across state lines? Did they hide? No, they didn't. They went to the Brattleboro Police Department and they told the police department everything that happened. Everything that happened. They weren't promised anything by the Brattleboro Police Department and yet they were completely honest and they told the Brattleboro Police Department everything that happened. They didn't hide anything and they didn't hide anything when they testified here before you. They are simple, uneducated people who were taken advantage of.

They were taken advantage of by two New Yorkers who thought they could come up here, pay two locals ten dollars to get their guns for them and then leave town, leaving the two brothers holding the bag.

What did the defense tell you? What's, what's the defense in this case? I submit to you that the defense in this case is, George did it. That is the defense. George did it. The defendant claims I just went along for the ride. I didn't know what was happening. George did it all.

I submit to you ladies and gentlemen that if the defendant was so innocent as he claims George told him, why would he leave New York at 3:00 o'clock in the morning, drive to Vermont, hit the first large town over the border for a cup



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of coffee on the way to Maine?

I submit to you that they had one purpose and one purpose only in stopping in Brattleboro, Vermont to buy guns for target practice. A .22 and two, .38's. Target Practice? They had one purpose and one purpose only, to come to Vermont to get guns any way they could. If they had to pay ten dollars they had to pay ten dollars and to get out of there, leaving no trace, no trace at all of where they were from.

False telephone number? No way they could be traced. What witnesses did the defense call? Mr. GALANES? I submit to you that it is unclear what Mr. GALANES testified to. I submit that his testimony was that he doesn't recall who was there. He doesn't recall anything, back in September. He recalls that a man named CLARENCE PARKER signed his form because CLARENCE PARKER's signature is on that form.

He told you he doesn't remember the defendant but he also said he doesn't remember anyone else that was there.

What value is his testimony if the man just simply doesn't remember. Called by the defense to tell you, I don't remember who was there. All I remember is someone named CLARENCE PARKER signed the form. The only way I remember that is because his signature is on the form. CLARENCE PARKER. I don't remember. The defense calls him to tell you, "I don't remember."

Then they call the defendant. The defendant would have you believe that he is in a bar at 9:00 a.m. in the morning. Excuse me, 9:p.m. in the evening with his friend George and George says, "Let's go to Maine." So the first thing that


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the defendant does is call his mother and say, "Can I go to Maine?" 19 years old, New York City and calls his mother and says, "Can I go to Maine?" And the story he told you was that he, they got to Brattleboro, they got out of the car to get coffee. Comes back and George is gone. Doesn't know where George is. He finally finds George in Clapp's and what story did the defendant tell you?

He walked into Clapp's, sees George is looking at guns and the defendant walks around, just walks around, then when George says, "Let's go," he walked out of the store. No involvement.

That's not what STEPHEN DUBOROW told you what happened and that's not what happened.

STEPHEN DUBOROW told you what happened. Then the defendant tells you that after walking out of the store with his friend, whose got a brown box or a box, I'm not sure what color it was. They get in the car, got over by the car, CLARENCE PARKER keeps telling them, "Let's buy some more guns for you,"and the defendant never questions him, never asks his friend what's this about guns? Did you buy a gun? Never says anything about that. That is his story.

Is that reasonable? His friend is found in the gun store looking at guns and walks out with a box, according to the defendant. Somebody named CLARENCE PARKER is begging him please let me buy some more guns for you and the defendant never asks his friend at any time, why, in Brattleboro, what's this about guns? Did you buy any guns? He never asked him



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about that, ladies and gentlemen, is that reasonable?

Is the defendant's story reasonable?

Ladies and gentlemen, I submit to you that those guns were put in that trunk of the car and they were brought back to New York. You see the .22. We don't see the .38's.

They went back to New York. The defendant took them back. He knew he was taking those guns back. With that ten dollars he got the delivery of those guns from CLARENCE PARKER and he was there when those forms were falsified. That was what the ten dollars was for. The defendant knew he couldn't get those guns himself. He knew it. He knew what he was doing was wrong.

That is the ten dollars. For ten dollars, he could get somebody to do what he couldn't do. For ten dollars. He knew what he was doing was wrong but he did it any way and he planned and he agreed right from the first to do this. Right when he pulled up on that curb and said to WAYNE, "Do you know where we can get some guns?" And when he was told, "I think you need a Vermont identification," the defendant figured money buys anything. He starts out with two dollars. He had to go up to ten.

He knew what he was doing was wrong and STEPHEN DUBOROW told him, you can't take the guns out of the state. He told everyone there, he told the defendant, you can't take the guns out of the state, but for ten dollars, the defendant thought he could get away wit it.

When he transferred the guns to CLARENCE after he came



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out of the store. He knew what he was doing was wrong, but he did it any way. He didn't want to hold those guns in Vermont, give them to CLARENCE until he got back to the car. Paid out the money for those guns. He knew what he was doing was wrong, but he did it any way.

I submit to you that the defendant has got to explain to you, STEPHEN DUBOROW, because the defendant told you the story. He has told you a story. That is, he walked into that store, he didn't touch anything. He just walked around and in CLAPP's he didn't touch anything.

STEPHEN DUBOROW told you what the defendant did. He had no confusion about that identification. Mr. DUBOROW, that is him. And that is what he did. He went to the guns. He got that .38. He opened it up. He fitted it in his belt and he paid for it and the defendant wants you to believe that, well, I didn't touch anything.

Ladies and gentlemen, I submit to you that the defendant came to Vermont for one reason, for one reason only, to buy guns, to buy guns, take them back to New York. A .22, two .38's, for target practice. And he almost got away with it. He almost got away with it. Except, he didn't count on the PARKERS, basic uneducated, simple, honesty. Didn't count on that. Didn't count on the fact that when they were told they might have violated the law that they would go to the police that they would go to the police right away that they would give the police a statement and tell them exactly what happened without any promises being made, without any promises at all


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being made.

He almost got away with it, except he didn't count on that and he almost left them holding the bag. He almost got back to New York, free and clear.

Ladies and gentlemen, I submit to you that the evidence is clear and that the truth is clear in this case, that the defendant was there, the defendant bought those guns, agreed to buy those guns and agreed to buy those guns at that time for ten dollars, and induced CLARENCE PARKER to get those guns for him and to falsify the statement saying that CLARENCE PARKER was the buyer.

I submit to you that's what happened. That's what happened on September 20th and I ask you to consider the evidence carefully to be true to your oaths. Regardless of how you feel about fire arms or gun control. View the evidence in light of your own experience and in light of what is the truth in light of how the witnesses appeared to you on the stand and I submit to you that if you do that, the evidence is clear that the defendant did violate the law, did induce CLARENCE PARKER to violate the law for the ten dollars and that he is in fact, guilty of the crimes with which he is charged in that indictment.

I want to thank you very much at this time for your kind attention during this trial. Thank you. 9:35 a.m.

THECOURT: Mr. Murphy?

MR. MURPHY: When I got here this morning, ladies and gentlemen, I decided I was going to keep my voice down. I



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was going to control myself but I find myself sitting over there in absolute disbelief, that he keeps referring to us as New Yorkers, referring to them as the local boys. Appealing to the worst thing in any one of us. Is there only justice for local boys?

New Yorkers. He is a New Yorker. Is not worthy of belief. I am from New York. I am not worthy of belief. These poor, uneducated local boys. That I came up here and took advantage of. That he took advantage of. He has finished eight years of school. No more than they have. But yet, he is from New York. What do you do when you have no case?

What do you come up here and say? When you've got two people who completely contradict each other right off the bat? When yau've got people who perjure themselves. Where do you go?

New Yorkers. Do you think that that's what that flag is about? That that's what this court room is about? That's the local boys, they are to be believed, nobody else is to be believed. That he can't get a fair trial here. Did I appeal to you and say to you, listen, we want a fair trial. I don't think we can get a fair trial in front of you.

I come from a town just like this on Long Island. I don't think you are any different than I am. And I don't think I am any less worthy of belief than anyone else is or any- more worthy of belief and I am sick that he came up here and appealed to you on that basis.

Let's look at who has a motive to lie here. Who got

immunity? Who was not arrested? Was any of these people arrested? Were any of them arrested? Are they facing five years on each count? Did you hear him say he was told that WAYNE says "Yes, I am facing five years on each count. I knew it. And then they let him walk out and return for his testimony. Would he lie for that?

They were orignally ten counts. That's fifty years in jail. Do you think WAYNE would lie for that? CLARENCE.

CLARENCE says that he didn't even know about the five years on each count but yet CLARENCE is in the same room while it is being explained to him. But CLARENCE isn't listening. Isn't paying any attention. He is sitting right next to him. Do you think that each and every one of you, if you were sitting in that room would have heard something as important as that?

CLARENCE never even asks WAYNE about it. And furthermore, WAYNE never says to CLARENCE, "Brother, we are facing fifty years in jail here on this." It's never mentioned. WAYNE doesn't tell him and CLARENCE doesn't know anything about it even though they are both sitting across the table from the Agent when it is explained to them.

Do you think they are lying about that? Is that reasonable? No. I asked WAYNE did you discuss your testimony with your brother? Did you discuss this case with him? Yes. Once a week he discussed the case. I asked CLARENCE did you ever discuss your testimony with your brother? Did you ever go over what happened? He says, No, we never did.


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They never discussed it between themselves. Is that reasonable? First of all, they never discussed it and second of all, if they are telling the truth, why do they have to go over it once a week to insure the fact that they have it down pat?

Do you think they are telling the truth about that?

The prosecutor asked you to look at the demeanor of the witnesses. To listen to what they say. To observe them. I submit to you that both of them completely perjured themselves.

Let's go to CLARENCE. CLARENCE fills out these forms. On the forms it says it is a felony for doing this. CLARENCE knows what the word "felony" means. CLARENCE has already been arrested for a felony. That is no big thing. But, it shows one thing. CLARENCE is a liar. Because when I asked CLARENCE "did you read the forms?" "Did you understand it? What it said there when you put "no"? He said that he forgot. He forgot. That he was convicted.

How do you feel about something like that? That is not even that important but then when the prosecutor gets up and says to CLARENCE, "Didn't you put that down because it was less than, it wasn't more than one year?" CLARENCE now says "yes, that is why I put it down."

Completely a contradiction of what he had already said. Why is it important? It shows he is lying. I mean, I don't think that there is any one here who can excuse all of these things and say that the man is not lying. There are so many



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points where this is so completely different, their stories.

I know the prosecutor got up here and told you that no, they said basically the same thing. A couple of minor discrepancies. That is just not true. His stories are just about completely different.

Let's go over the testimony. All I am going to ask you to do is this. The, just please, please look at it as you would look at it if somebody else were telling you. Is it reasonable? Did it happen this way? Did it probably happen this way?

WAYNE tells us he is standing outside the corner market He is standing out there and it is ten minutes to nine. Stores, the stores are supposed to open at 8:30 but on this day it is not open at 8:30. There is nobody else on the street and all of a sudden BOBBY GIALLANZO and another boy, pull up in a car. They asked him where are there any sporting gooods stores? Do you know what the laws are in Vermont in relation to buying guns?

Now, the prosecutor would have you believe and WAYNE would have you believe that they drove all the way up here from Vermont to buy guns, from New York, and didn't know that they couldn't buy them, or, knew that they couldn't buy them but yet, drove up here hoping to find somebody standing on the street so that they could get the guns from them.

Now he tells you on his first time that he testifies that he gets into the car with them at that point. Then whe I got him back on recross I asked him, "Didn't you say that



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you had them drive around the corner into the parking lot, on a prior occasion? Yes. Yes, he said that.

Why would he have them drive around the corner into the parking lot to discuss this, when there are no cars in front of the place, they pulled into the curb and there is nobody there.

Why would he say that? It never happened. It just never happened. He is saying that because he is lying and he is confused. It never happened.

Now, he says that they tell him that theyare going to make it worth his while. They are going to give him two dollars. If he's got the price of a pack of cigarettes, which I believe is fifty cents, well then, he is not going all the way to his brother's house to get his brother out of bed to violate the law and to go through all of this for two dollars.

He says that he doesn't understand exactly what the gun laws are. He says that he had to go get his brother because he thought he needed a license. His brother said that WAYNE knew I didn't have a license. WAYNE had a fishing license himself. WAYNE could have bought the guns himself. If WAYNE went to get his brother, don't you think he knew what the gun laws were?

He never went to get his brother. It never happened that way. It is ridiculous to even think it happened that way.

He tells you his brother is a taxi cab driver and he works nights. For two dollars, is he going to wake his brother up to get him out and to come and buy guns for two perfect



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strangers? Remembering, him and his brother never bought guns before for anyone. They never did anything like this before.

Here they are getting in a car with two perfect strangers and driving to his brother's house to do something and to ask his brother to do something, for two people they never saw before and doing something they have never done before. Can you buy that? Is that areasonable? Is it believable? It never happened. It never happened, that is why their stories conflict so much, because they are lying.

Nobody likes to come up here and call anyone a liar and I don't like coming up here because in the back of my mind I am telling, I am saying to myself, I hope to God these people don't resent this. But, what else do you call someone when they get up there and they don't - they continually distort what happened, when an innocent man is sitting over there and they are trying to put him in jail to save their own necks.

He goes to his brother's house, supposedly, and wakes his brother up. I asked WAYNE, what does it really matter who was at his brother's house? It doesn't, except for one thing. I know they never went to his brother's house.

So, I asked him who was at your brother's house, WAYNE? Figuring if they were never there, he wouldn't know. He says, his girl friend and a friend. I asked his brother, who was at your house? My wife and two children. I don't know whether he said they were his children or two other children.

I tell him what SAYNE says. No. No, he's up there and he's going to stick to what he said.



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I mean, doesn't it mean anything when you stick your hand up and swear to tell the truth? Does that mean anything? Are they mistaken? Was WAYNE mistaken? Was he mistaken? They are both lying. Nobody ever came to the house.

WAYNE says, "I went up and told my brother about the two dollars up in the house. My brother said he wanted more money," and they discussed it and he got dressed and came down.

CLARENCE says that WAYNE never told him what they were going to get, in return for doing this, that he didn't know or never mentioned it to him.

Now, first of all, is it reasonable that WAYNE would have gone there without knowing what he was getting and second of all, if he knew he was getting two dollars as he said that he did know they told him, wouldn't he have told his brother?

Now, if his brother knew they were getting two dollars would he have gotten up, come down and tried to up the price on them? Is that resonable? Do you believe that it would have happened that way?

Why, why is there such a conflict between them, because, it never happened that way. It just never happened. It is not reasonable that it would have happened that way.

The prosecutor has told you that they have told the truth. They are local boys. These New Yorkers came up here and hustled. It is almost a joke. It is almost a joke, to hear the prosecutor say, "the best of my knowledge." Did you hear CLARENCE, "to the best of my knowledge." "To the best of



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"my knowledge." "To the best of my knowledge." ARe those Clarence's words?

Do you think maybe CLARENCE was prepared?

Now, supposedly what happense next, according to them, they get into the car and drive into town. Now, according to CLARENCE, they go into SAM'S ARMY & NAVY STORE. Well, where is SAM'S? Where is the clerk in SAM'S ARMY & NAVY STORE?

I submit to you that they subpoenaed people here to Court and never put them on the stand because they didn't like what they said. And, I don't know what this is supposed to be. A contest between them and Jim and I? Or, justice? Or, giving him the fair shake that he is supposed to get?

Where is the guy from SAM'S ARMY & NAVY STORE? Why isn't he here? Because he was never in SAM'S ARMY & NAVY STORE?

I don't know whether CLARENCE PARKER was but I know he was never there and that is why he is not here, because he can't identify him and he probably doesn't even know what they are talking about.

Now we go to CLAPP'S. CLARENCE PARKER tells us that he and BOBBY go into CLAPP'S. His brother WAYNE, waits outside by the way, before I forget, WAYNE's waiting outside in front of the BAKER'S. BAKER's is still closed, by the way. It is not open yet. Still before 9:00 o'clock, according to WAYNE, to buy cigarettes. Already waited twenty minutes outside another store for a pack of cigarettes. Left and



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went to his brother's house, after waiting twenty minutes for two people who just pulled up in a car and asked him to help him buy guns, the guy waits for cigarettes, twenty minutes, now waiting outside of BAKER's, waiting for it to open. He could have gone into the sporting goods store. Any of them, and bought cigarettes in there. But he doesn't. He waits outside BAKER's.

In any event CLARENCE tells us that they go in to CLAPP's Store to buy guns and to, - BOBBY looks at the guns and he's in this by himself. The person who GEORGE SORIENTI who ends up with the guns, doesn't even go in. But, BOBBY goes in and looks at the guns. But BOBBY doesn't have any money. He has to go back out to GEORGE to get the money from GEORGE. GEORGE now comes in and two guns are purchased.

GEORGE Purchases a Derringer. BOBBY supposedly purchases a .38. Mr. DUBOROW who is the gentleman and who is theClerk in the store, what is his testimony? He testifies that CLARENCE pays most of the money for the .38. CLARENCE says and CLARENCE had said, that GEORGE SORINENTI paid for the Derringer. CLARENCE says I never touched any of the money. I had nothing to do with it.

Well, why is DUBOROW saying CLARENCE Paid for the .38? Does he have SORIENTI buying his own gun that he has? You have DUBOROW saying that CLARENCE who had nothing to do with this, paid for most of the money for the 38.

How, the prosecutor has attempted to put some sort of onus upon me to explain away Mr. DUBOROW.



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The law says I don't have to explain away anything. That I don't have to do anything that I don't even have to, he doesn't even have to take the stand. He doesn't have to tell you anything. But, I am going to tell you.

You may not like to hear it but I submit to you that the Parkers were buying guns in there, they were buying guns from Mr. DUBOROW and Mr. DUBOROW was as guilty as they are.

Mr. DUBOROW testified that he made a mistake in that he gave them two guns, when he shouldn't have, because the law had changed five weeks before.

Now, CLARENCE PARKER, he said that he had forgotten it. That it slipped his mind. Mr. DUBOROW's mind. CLARENCE PARKER stated that he asked DUBOROW, he asked him, how many guns can I guy and DUBOROW says, "there's no limit."

Now, if you are asked how many guns can I buy, don't you think that at that point, you are going to remember that you could only buy one gun?

It's possible that he might have forgotten. Not probable if he is in business and he's worked there seven months, but there is a remote possibility and I would give him the benefit of that doubt, except for one thing. He's been asked about it. You don't forget something when somebody asks you about it.

Now, he testifies that he thought that CLARENCE PARKER was buying the gun. Because, that's to save his own neck. He can't say that, "No," he didn't think, he didn't think he was buying a gun. But if it happened the way he said it



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happened, that BOBBY GIALLANZO was trying the gun, was putting it on his side, was doing it, everything like that. Would a reasonable man think that CLARENCE PARKER was buying that gun? Would they?

Now, what happens next? Supposedly you later discover that he made a mistake and that they can't have the two guns. He says Mr. CLAPP brought it to his attention. I submit to you that Mr. CLAPP found out what was going on and Mr. CLAPP told him to go get those guns back.

At this point, he went out to his house. Now, it is Saturday morning. Saturday morning is probably a very good morning at a sporting goods store. The place across the street was crowded.

Now, what is the reasonable thing to do? Is it to pick up the telephone or to leave the store and go to somebody's house? Is it to pick up the telephone and call the guy up to find out first of all, that he is home, before you start leaving your business and driving out to the house.

He didn't have to pick up the phone, for one reason. He knew he didn't have a telephone. That's why he had to go out to his house. How did he know he was home? Probably told them, probably asked somebody out on the street where he was.

Just does the whole thing ring true? Can you really accept this? Nobody knew what was going on. Every one is innocent. There is only one guilty person here and that is him. The New Yorker. Doesn't the whole thing smell?



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Now, at this point, CLARENCE tells you they go over to a different sporting goods store to buy another .38. Well, ask yourselves this: If you could buy all the guns you wanted in the first place, why do you have to go to a different store? It never happened. It justnever happened.

Who subpoenas Mr. GALANES? Who - do I subpoena him? I don't know who he is. The prosecutor subpoenas him, talks to him, doesn't like what he says and doesn't put him on.

Is it a contest? I mean, is there some sort of moral victory in convicting someone who is innocent?

I talked to him. I asked him what happened, because for one reason, I know he wasn't in that store. I asked him, look at him, - -

THE COURT: The Court will rule that this line of argument is improper, Mr. Murphy.

MR. MURPHY: Did you hear him on the stand? Did I ask him, "Did you ever see him before?" "No." "Did you ever see him in your store before?" "No, I don't ever remember seeing him in my store before."

Now, the prosecutor tells you he didn't know anything about anything, Mr. GALANES. I find it almost incredible that I can stand here and tell you that. Mr. GALANES has testified that CLARENCE PARKER was haggling with him over the price, that he was looking at two guns and he wanted this gun for the price of that gun. Did he ever talk to BOBBY GIALLANZO? Did he ever talk to anyone else?

Ask yourselves this. There's been testimony and you



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have heard it, about BOBBY GIALLANZOhaving tattoos on his arm, a little tattoo, one of them a big heart with the name "BOBBY" in it. Now, does Mr. DUBOROW remember anything about that? Does Mr. DUBOROW remember anything that GIALLANZO was wearing? No! The reason DUBOROW doesn't remember is he only saw GIALLANZO for about ten seconds. The reason Mr. GALLANES doesn't remember anything is that he never saw him, period.

Don't you think that if he was there in a "T" shirt with tattoos all over his arm, that he would have remembered? If he remembers the other guy haggling over with him, over the price. Wouldn't he remember him if he were there? He doesn't remember him because he wasn't there.

He remembers CLARENCE, though, because CLARENCE was there. CLARENCE bought the guns. CLARENCE was there. CLARENCE bought the guns and CLARENCE probably gave the guns to someone outside. That's what happened.

Why don't they put these people on the stand?

Next, we have Agent REILLY who takes the stand. Agent REILLY comes out and I asked him, "Did you go down to GEORGE SORIENTI's house?" "Yes." "Yes, I did." "Did you talk to GEORGE SORIENTI about this?" "Yes." "Did GEORGE SORIENTI return the gun to you?" "Yes,"he did, he returned the Derringer to him. He testified that he arrested SORIENTI. Did he question SORIENTI about GIALLANZO? Yes, SORIENTI tells you GIALLANZO was innocent. "Yes, he did., had nothing to do with it." Now, I asked him, "Well, did you ask him about the two guns?" "No , I didn't ask him about the two guns." "I



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"never asked him about that." "Well, did you ask GIALLANZO about the two guns?" "No, I never asked GIALLANZO about the other two guns." I said, "Didn't GIALLANZO tell you he knew nothing about the two guns?" "No, he never told me he knew nothing about the two guns." Finally I pry it out of him, GIALLANZO told him that he was innocent.

Well, if he never asked him about the two guns and he never asked him anything about anything, what was GIALLANSO saying he was innocent to? Is it reasonable that he goes all the way to NEW YORK and supposedly three guns are purchased, gets one of them back from one person and never asked the other person about the guns? Never asks where the other two guns are?

I mean, is it reasonable? I now ask him, "Were you upstairs when Mr. SORIENTI was upstairs. Did he tell you GIALLANZO had nothing to do with this? "No, I never heard that." Maybe he wasn't there. There's been no evidence presented in court to show he was there. So, it would be unfair to say he was.

However, you findout when Mr. GIALLANZO takes the stand from the prosecutor that, yes, he was up there and he said that. And that subsequent they told him what was going to happen to him, that he was going to jail and that he then said that, "I'm not talking to you."

Now, is it reasonable to infer, and I don't think it's unreasonable, that AGent REILLY whose case this is, who is working on it with the prosecutor, who is here every day, would know what one of the defendants was saying, that the

other one was innocent, that he had nothing to do with it?

Now, why did SORIENTI of all people lie? SORIENTI gives him the gun back. If he was going to give him the gun back, don't you think he would have told them where the other two were? Is that unreasonable? Isn't that what would normally happen?

Why is a person going to give one back and not tell them where the other two were? To give him a gun back, then start telling him somebody else had nothing to do with it? It's a strange accredibility. It strains my credibility that they brought him up here and then didn't let, didn't put him on. Didn't let you hear what he had to say. They subpoenaed him.

They would have you believe that CLARENCE or WAYNE went to the Police Department of their own volition. Well, if they did, where were the police officers that they saw and how did they go and when did they go?

Agent REILLY told us that the police started the investigation a month later. That they went down to New York a month later. They had the license plate of the car. WAYNE memorized the license plate of the car, then wrote it down.

I submit to you, why would you write that down? What's the purpose of writing down the license plate? What's the purpose of memorizing it, then writing it down? Why is he keeping that license plate? Doesn't that sound a little unreasonable to you?

Now, supposedly, according to CLARENCE, they go back to the car and BOBBY GIVES CLARENCE a phone number on a napkin



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which is uncontested. He has told you that he gave it to him and he gave him the wrong number Now, if he was interested in buying the guns, why would he give them the wrong phone number? Isn't it a, isn't that a little ridiculous? Isn't it a little ridiculous to do that? I can't possibly imagine why anyone would do that, or why?

Now, if he's the one that's interested in buying the guns, why is he giving CLARENCE the wrong phone number?

You heard me ask WAYNE that any people outside with you, -"I don't remember;""I'm not sure." "I don't know." "I don't know."Ask Clarence." "Not to best of my knowledge." Is that an honest answer? Is that an honest answer?

If there were 3 people out there, or if there weren't 3 people out there, especially if there weren't, couldn't the answer be "no"? Wouldn't the answer be "no"?

THE COURT: Mr. Murphy, you've exceeded the time, that, the allotted time for argument. It's now nearly fifty minutes.

MR. MURPHY: Your Honor, may I have ten more minutes, please?

THE COURT: The Court will allow that, but I call that to your attention so you'll bring your argument to a close within a reasonable time.

MR. MURPHY: Excuse me, Your Honor. Mr. GIALLANZO took the stand. He told you, - he told you he was in a bar drinking in New York, which I am sure everyone here is, or knows the age limit is eighteen. He's now, got nothing to do, doesn't have to work the next week, the other boy doesn't have to



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work they say, "Let's go on a trip. Do you want to go to Maine?" There's conversation concerning there's people know somebody, we'll go up there.

Is that unreasonable? Is it unreasonable that he calls his mother and asked her if he can go? The prosecutor says, "Did your mother know you were drinking in a bar?"

Well, I assume it's not too much different anywhere else, if you're allowed to drink, that's the age limit and he's in a bar. Is there anything wrong with that? I mean, is that outrageous? But to go away for three days, wouldn't you have to call your parents up? And ask her permission?

He goes home, packs clothes, they go get something to eat, gets in a car and drives. He tells you, he was asleep most of the way, they stopped a couple of times to go to the bathroom. Arrived here. Explained what happened. Where did he get the napkin from? From the store where they got the coffee from.

Is there anything unreasonable about that? Is there anything unreasonable about what happened? The other guy not being in the car when he comes out? Is there anything unreasonable about asking WAYNE, "Where are they? What are they doing?"

Is there anything unreasonable about going up to the store? Did he buy any guns in the store? No, he told you "I didn't buy anything."

The prosecutor made a big deal out of the fact that he never said to him, "Hey is that agun you have there?" He told



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you, George said, "I'm buying a gun." The other guy handed him the box. He put it under the front seat. Is that unreasonable?

He knows what's in it. He says he's buying the gun, he comes out. The prosecutor would have you believe that he has to ask him, "Hey, is that a gun?" Is that this, is that that? He knows what it is. There's nothing unreasonable about that.

They ask for directions after that, to Maine. The inter-state they say, they said, to Maine. He ends up in North Conway, which I believe is right near Maine some place, near the tip of New Hampshire.

Is there anything unreasonable about this story? Are any guns ever recovered from him? Do they ever search his house? Did they ever find any guns? Does the guy who bought the gun say, he had nothing to do with it? Is he lying? I can't possibly believe this, that you could think that he is lying when there is not one single thing incredible about his story, where he wasn't found to give you a different answer one time, then a different answer this time.

The prosecutor would have you believe he is a slick New Yorker. He's got eight years of schooling. He's now 20 years old. Is he that smart? That he can concoct this story? That the other guy concocted this story when the police came to him? When the agent came to him, that he had nothing to do with it? I suppose they were waiting for the Agent to come and that George already knew that he was to say that he had nothing to do with it and already he knew that he was to give



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him the gun back? Is that reasonable?

I am not going to have an opportunity to talk to you again because the prosecutor is going to come up here and he is going to tell you that he's got a great case, that he's lying, that all of these people from Vermont are all telling the truth.

I've got no chance to rebut him, so I am not going to do that, but I submit to you, you each promised me that you would give him a fair trial, the same fair trial you would want.

I asked you, is there any one here who would want to be convicted on this evidence. Personally, I can't see how you can come to any other conclusion other than the fact that this gentleman is innocent.

Forget about reasonable doubt. They haven't proven anything.

You have suffered here for three days through this trial. I am going to ask you this please, don't let him wait. Please come back in ten minutes with "not guilty". Thank you.

(10:20 a.m.)

THE COURT: Mr. Hughes?

MR. HUGHES: May it please the Court, Ladies and Gentlemen of the Jury, I want to address a few things that Mr. MURPHY has told you today.

Mr. MURPHY says, - talks about himself being personally worthy of belief. As Your Honor told you before, the lawyers are not on trial here, the Defendant is. And the credibility

of each witness is up to you to decide. Also, much emphasis has been placed on the punishment in this matter. Possible punishment in this case.

Again, punishment has nothing to do with guilt or innocence. The question here is whether or not ROBERT GIALLANZO committed the offenses for which he is charged.

WAYNE PARKER never said he a meeting once a week to get the story down pat. Mr. MURPHY said that. WAYNE PARKER said that the times he met with his brother, probably once a week, he mentioned this.

There is no evidence in this case that CLARENCE has been arrested for a felony. The evidence is, that CLARENCE was arrested for a bad check, check charge. It's as simple as that.

There is a lot of stories, a lot of talk about stories being completely different stories being completely different. Well this, of course, is up to you to decide and the Government conceeded in the beginning, and we conceed now, there are a lot of things about this story that don't jibe. A lot of little things. But Mr. MURPHY led you around a path on this. I think you should focus on the important things here.

Let's look at CLAPP's. Let's talk about CLAPP's. What happened there? Did CLARENCE and STEPHEN DUBOROW talk the same things? Yes, generally. The only difference I can remember is that of the money. Again, that is up to you.

Mr. DUBOROW said that CLARENCE PAID part of the money and that BOBBY paid the rest, for a .38. Mr. DUBOROW said that BOBBY fit the weapon to his side. I'd like you to focus


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on CLAPP's.

The Government thinks that's very important. There's been a lot of talk about subpoenaeing people who weren't used, because we didn't like their testimony. Ladies and Gentlemen, witnesses who are under subpoena are available to both sides.

Now, if these witnesses were going to show Mr. GIALLANZO innocent, why didn't they call him?

MR. MURPHY: Objection, Your Honor, -

THE COURT: Yes, the Court thinks that the witness was equally available to both sides under the evidence that's been produced here.

MR. HUGHES: I submit that again, why didn't he call him? Why didn't he call them?

THE COURT: Well, it also applies, why didn't the Government call them.

MR. HUGHES: Of course, Your Honor.

THE COURT: So, you don't need to spend any more time with that.

MR. HUGHES: Phillip GALANES. The Government submits that he really didn't know what was going on here. He knew that a gun was sold, by looking at the form. He looked at the form and says, "Yes, CLARENCE PARKER bought a weapon." He remembered some talk about haggling over a price. Yes. "Do you remember, generally, some other people being there?" He didn't remember who they were. As a matter of fact, he said he couldn't identify them, he said he couldn't identify CLARENCE PARKER. For the first time he recognized, the

first time he saw them in his recollection, was here at the trial.

CLARENCE testified that BOBBY went to GALLANFS to get a cheaper gun.

MR. MURPHY: Objection, Your Honor.

THE COURT: Well, we'll allow you to state your objection but again, in the recittal of the testimony, both sides have argued to you what they believe the testimony is and as I have previously indicated, what the testimony actually is, must be governed by your recollection of the testimony or by reference to the record if it's that important. And it's not what the attorneys may claim. They may argue it in a certain way what they believe it indicates. But, in the last analysis it is for you, the Jury, to decide.

MR. HUGHES: Mr. MURPHY said that Agent REILLY said that Mr. SORIENTI said that Mr. GIALLANZO was innocent. We think Mr. REILLY said not that, something similar maybe, but distinctly different. Mr. SORIENTI said that he was guilty of the .22. He never said Mr. GIALLANZO was innocent. But again, he never said he was guilty. There's a big difference.

Mr. MURPHY made reference to the fact that Mr. SORIENTI gave the .22 back. He was wondering why he didn't give the .38's back. Simple. He didn't have them. Mr. GIALLANZO had them.

The Government submits that a wrong phone number was given so these guns could never be traced back. It's as simple as that. If they wanted to buy guns again they could go and



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find someone else to do it.

Mr. GIALLANZO says he never touched a gun. Never put one in his belt. Again, I draw your attention to Mr. DUBOROW's testimony.

Ladies and Gentlemen, I submit that the nature of the evidence in this case is overwhelming to support a conclusion of guilt.

I submit that the Government has proved beyond a reasonable doubt that ROBERT GIALLANZO induced CLARENCE PARKER to obtain and deliver guns.

Two, that ROBERT GIALLANZO induced CLARENCE PARKER to falsify fire arms records. ROBERT GIALLANZO transported these guns to New York. ROBERT GIALLANZO and Mr. SORIENTI planned and agreed to do these things.

At this time Iwill remind you of the juror's oath, that you must find ROBERT GIALLANZO guilty, if you find, beyond a reasonable doubt that he has committed the offenses for which he is charged.

The Government appeals to you to and reminds you of your duty to consider the evidence, to listen to it think of it, objectively and logically.

I thank you for your time and consideration. (10:26 a.m.)

THE COURT: We'll take a brief recess at this time, ladies and gentlemen, before we submit the case to you.

(RECESS FROM 10:26 A.M. UNTIL 10:40 A.M.)

THE COURT: Members of the Jury, the Court appoints Mr. SUMNER to serve as your Foreman in this case.



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This is a criminal prosecution by the United States against the defendant, ROBERT GIALLANZO. The case comes to this Court by way of a presentment to the Grand Jury in an indictment which charged ten violations of the laws of the United States.

The Court has ordered that Counts 1, 2 and 3 of the indictment as presented, to be consolidated into one count and as to that, I will refer to it as the first count.

Counts 4, 5 and 6 are also consolidated into a single count and I'll refer to that as the second consolidated count.

Counts 7, 8, 9 and 10, remain as numerically presented by the Grand Jury.

Now, the defendant has pleaded "not guilty" to all of the charges that have been asserted against him and later in the course of these instructions, I will refer to the specific offenses alleged in the various counts of the indictment, but before considering the specific charges which have been presented against the defendant, GIALLANZO, I will instruct you concerning certain general rules which are to govern your deliberations in this case.

It is your duty as jurors to follow the law as stated in the instructions by the Court and to apply the rules so given to the facts as you find them from the evidence in the case.

You are the sole judges of the facts. You are not to single out any particular alone, as stating the law, but you must consider the instructions of the Court as a whole.

No statement or ruling or remark which I have made duringthe course of the presentation of the testimony, or during the course of the instructions, is intended to indicate my opinion as to what the facts are. It is your province to determine the facts in this case from all of the evidence that has been presented during the course of the trial. And any testimony which has been excluded or which has been stricken from the record, is not evidence in the case and you will entirely disregard it in arriving at your verdict.

Likewise, as I indicated at the outset, the arguments of the attorneys and any statements which they have made during the course of their opening statements and arguments, are not evidence and will not be considered by you as evidence.

You will render your verdict only from the evidence in the case, which consists of the sworn testimony of the witnesses and all exhibits which have been received in evidence and any reasonable inferences which arise from the testimony in the case and bear in mind it is your recollection of the witness' testimony and not the attorneys' statements as to what the testimony was, which shall control you in reaching your verdict.

In the consideration of the evidence you are not limited to the bald statements of the witnesses. To the contrary, you are permitted to draw from the facts which you find have been proven, such reasonable inferences as are justified in the light of your own experience.

The law presumes a defendant to be innocent of an



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accusation of crime. Thus, the defendant, though he has been accused, begins the trial with a clean slate with no evidence against him. And, the law permits nothing but legal evidence presented before you, the jury, to be considered in support of any charge against the accused.

So, the presumption of innocence requires that the defendant be acquitted unless you, the jurors, are satisfied, beyond a reasonable doubt of the defendant's guilt, after a careful and impartial consideration of all of the evidence in the case.

A reasonable doubt, is a doubt based upon reason and common sense. The kind of doubt that you would, that would make a reasonable person hesitate to act in his own affairs.

Proof beyond a reasonable doubt, must therefore, be proof of such a convincing character that you would be willing to rely and act upon it unhesitatingly in the most important matters in your own life.

While bearing in mind that it is rarely possible to prove anything to an absolute certainty, the Jury will remember that the defendant is never to be convicted on mere suspicion or conjecture.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. And that burden never shifts to the defendant, for the law never imposes upon a defendant in a criminal case, the obligation, or duty, of calling any witnesses, or producing any evidence.

A reasonable doubt exists when, after a careful and


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impartial consideration of all the evidence in the case, the Jury does not feel convinced to a moral certainty that a defendant is guilty of the charge.

So, if the Jury views the evidence in this case as reasonably permitting either of two conclusions, one of innocence, the other of guilt, the Jury should of course, adopt a conclusion of innocence.

Now, there are two types of evidence. Direct evidence and circumstantial evidence. Direct evidence means evidence that directly proves a fact and which in itself if true, conclusively establishes that fact. Such as the testimony of an eye witness.

Circumstantial evidence, means evidence that proves a fact from which an inference of an existing, of the existence of another fact may be drawn.

It is not necessary that all the facts in the case be proved by direct evidence. They may be proved, as I have indicated, by circumstantial evidence, or a combination of direct evidence and circumstantial evidence.

Circumstantial evidence, we rely upon in our own daily lives. Constantly. To give you a homely illustration, if a rifle shot is fired, you don't see the projectile leave the weapon. You may hear the report, you may see smoke emitted from the powder that was discharged. But you have a right to assume, reasonably assume and reasonably conclude, that the shot is fired, if you heard it, if you saw the weapon being fired and saw the smoke emitted from it, even though you didn't



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see the projectile travel through the atmosphere to its target.

Bear in mind the law makes no distinction between direct and circumstantial evidence but simply requires that before convicting the defendant, the Jury must be satisfied of the defendant's guilt, beyond a reasonable doubt, from all of the evidence.

You, as jurors are the sole judges of the credibility of the witness and the weight their testimony deserves. You should carefully scrutinize all the testimony given. The circumstances under which each witness has testified and every matter in evidence which tends to show whether a witness is worthy of belief.

Consider each witness' intelligence, his motive and state of mind. His candor, or lack of candor. The demeanor and manner that the witness indicates, while he is on the stand and testifying. Consider the witness' ability to observe the matters as to which he has testified and whether he impresses you as having an accurate recollection of these matters.

Consider also any relation that a particular witness may bear on either side of the case, the manner in which a particular witness might be effected by the verdict, and the extent, if at all, each witness is either supported or contradicted by other evidence in the case.

Some stress has been made of inconsistencies and discrepancies of various witnesses. Inconsistencies, or discrepancies in the testimony of a witness, or between the testimony of



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different witnesses, may or may not cause you, the Jury, to discredit such testimony.

Two or more persons witnessing an incident or a transaction, may see or hear it differently and if the transaction or episode occurred some time ago, they may have some difficulty in recollecting each detail.

Innocent misrecollection like failure of recollection, is not an uncommon experience with any of us. In weighing the effect of a discrepancy always consider whether it pertains to a matter of importance or whether it is an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment in these matters, you will give the testimony of each witness such credibility, you will attach such weight, to the testimony of each witness, as you think it is fairly entitled to receive.

Evidence that at some other time a witness other than the accused has said or done something, or has failed to say or do something which is inconsistent with the witness' testimony at the trial, may be considered by the Jury for the sole purpose of judging the credibility of that witness. But it is never to be considered as evidence or proof of the truth of any such statement that the witness may have made at that time.

Where, however, the witness is a defendant on trial in the case and by such statement or other conduct, the defendant admits some fact against his interest, then such staiement or



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other conduct, if knowingly made or done, may be considered as evidence of the truth of the fact so stated, as well as for the purpose of judging the credibility of the defendant as a witness.

Some of the Government's witnesses in this case, and I refer particularly to WAYNE and CLARENCE PARKER, were admittedly particpants in some of the crimes charged in the indictment. The Government must frequently use such testimony because otherwise it would be difficult or impossible, perhaps, to detect or prosecute offenders.

Now, the testimony of an accomplice is not to be rejected unless the Jury thinks it is entitled to no weight. Like any other fact it is to be taken up and dealt with by the Jury by you, who are the triers of the facts.

An accomplice does not become incompetent as a witness because of participation in the crime charged. To the contrary, the testimony of an accomplice alone, if believed by the Jury, may be of sufficient weight to sustain a verdict of guilty, even though not corroborated or supported, by other evidence.

However, the Jury should keep in mind that such testimony is always to be received with caution and weighed with care and you should never convict a defendant upon the unsupported testimony of an alleged accomplice, unless you believe that the unsupported testimony, beyond a reasonable doubt.

So, it is that the testimony of a witness who provides evidence against the defendant, for immunity from punishment,



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or for personal advancement or vindication in any way, must be examined and weighed by the Jury with greater care than the testimony of an ordinary witness who doesn't have such a background.

You, the Jury, must determine whether the witness' testimony has been effected by his interest in the matters concerning which he has testified, or by prejudice against the defendant. And again I refer particularly to the testimony of WAYNE and CLARENCE PARKER.

Now the fact that a witness has been convicted of an offense involving dishonest conduct in some manner, if such be the fact, may be considered by you only for the purpose of determining the credibility of that particular witness.

The fact of such a conviction, does not necessarily destroy or impair the witness' credibility. Yet, it is one of the circumstances you may take into consideration in weighing the testimony of that particular witness.

Now, it is the law that a defendant who wishes to testify in his own behalf, is a competent witness. But again, the defendant's testimony is to be judged in the same way as that of any other witness.

Of course, you may consider, in weighing his testimony the seriousness or the serious interest that the defendant has in the outcome of the trial in determining what weight you will give to his testimony.

The defendant has been indicted by the GrandJury and accused of several separate violations of the laws of the

United States and as I indicated at the outset of the trial in the preliminary instructions that were given, you are not to consider the fact that the accused had been indicted as in any way, bearing upon his guilt.

As I indicated at that time, it is simply a way that the Government brings its case into court to inform the defendant of the nature of the offenses which have been charged against him. And the fact that an indictment has been made or asserted or presented against the defendant, has no bearing whatsoever on [illegible] guilt or innocence and you must entirely disregard it.

The indictment charges several violations of the laws of the United States and the indictment as presented in Counts 1, 2 and 3, have been ordered consolidated by the Court and I refer to that as the first count of the indictment as they are combined.

And this first count, as consolidated, charges that on or about September 20, 1975, ROBERT P. GIALLANZO and GEORGE W. SORIENTI, unlawfully, wilfully and knowingly, did transport certain fire arms listed in the count, into the STate of New York, where each resided, from the District of Vermont, where the fire arms were purchased. And otherwise obtained by ROBERT GIALLANZO and GEORGE W. SORIENTI, in violation of Title 18 of the United States Code, Sections 2 and Sections 922 A 3.

Now, the fire arms which the counts of the indictment allege were transported, are .22 Magnum, caliber, high-standard



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Derringer, serial number 24049640. Also a .38 special caliber Colt revolver, serial number F81586. And a caliber .38, Iver Johnson revolver with the serial number G411117.

Now the statute upon which these consolidated counts are the first count of the indictment, are based, reads in part, as follows: "It should be unlawful for any person except those properly licensed to do so, to transport into the State where he resides, any fire arm purchased or otherwise obtained by such person outside that state." And the statute, the Fire Arms Control Law, defines a fire arm as "Any weapon which will or designed to or may readily be converted to expel a projectile by the action of an explosive."

Now, in order to sustain the charges in the first count, the first consolidated count of the indictment, the Government must establish, beyond a reasonable doubt, that the defendant on or about September 20, 1975, transported the fire arms that I have just described, from Vermont to New York.

Second, that on or about September 20, 1975, the defendant resided in the State of New York and third, that the fire arms described and which I previously indicated by serial number, were purchased or otherwise obtained by the defendant on or about September 20, 1975, in the State of Vermont and that the defendant acted knowingly and willingly in this transportation.

Now, wilfully and an act or omission is wilfully done, if voluntarily and if done voluntarily and intentionally done and with specific intent to do something which the law forbids,



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or with specific intent to do something which the law, well, I will re-state that.

It requires, an act or omission, if it is wilfully done if it is done voluntarily and intentionally and with the specific intent or purpose to do something which the law forbids. That is to say, with a bad purpose. Either to disobey or disregard the law.

An act is knowingly done if it is done voluntarily and purposefully and not because of mistake, accident, or mere negligence or any other innocent reason.

The purpose in requiring the acts charged that they were done knowingly, is to insure that no one would be convicted because of mistake or accident or other innocent reason.

Now, the word "unlawfully" is used in the statute, means contrary to the law. So, to do an act unlawfully, means to do wilfully, something which the law forbids.

Bear in mind that I referred to the four essential elements to establish the crime charged here and so the burden is on the Government to prove beyond a reasonable doubt, each of these elements. Namely, that the defendant did, at the time in question on September 20, transport the fire arms that are specified.

Also, the burden is on the Government to establish that the defendant at the time in question, namely, September 20, 1975, resided in the State of New York and thirdly, that the fire arms were obtained by the defendant on September 20, or there abouts, in the State of Vermont and that the defendant



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in doing so, acted wilfully, willingly and knowingly.

Now, Count One, the other count perhaps is easily understood as the transportation count. The succeeding counts in the indictment, namely, 4, 5 and 6, again, the Court has ordered consolidated and I refer to it as the second count and that charges that on or about September 20, 1975 in the District of Vermont, CLARENCE R. PARKER, did transfer, sell, trade, give and deliver, a .22 Magnum caliber high-standard Derringer, serial number 2449640, a .38 special caliber Colt Cobra revolver, serial number F81586 and a .38 caliber Iver Johnson revolver, with the serial number G41117, and that the defendant at that time, were such that CLARENCE PARKER knew or had reasonable cause to believe, resided in the State of New York, a state other than that in which CLARENCE PARKER resided at the time of the aforesaid transfers, sale, trade, gift and delivery and that on or about September 20, 1975, in the District of Vermont, ROBERT GIALLANZO, the defendant, unlawfully, wilfully and knowingly, did aid and abet, counsel, command, induced, procure and cause CLARENCE PARKER to commit the above offenses against the United States, in violation of a particular section of the United States Code, namely, 922A5 and Section 2 of Title 18.

The statute under which the second consolidated count of the indictment is based reads in part, as follows: "It shall be unlawful for any person to transfer, sell, trade, give, transport or deliver, any fire arms to any person who the transferror knows, or has reasonable cause to believe,



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resides in any other State than that of which the transferror resides.

In order to sustain the charges on this count, the Government must establish beyond a reasonable doubt, first, that on or about September 20, 1975, CLARENCE R. PARKER did transfer or deliver the fire arms which have been previously described.

Secondly, that CLARENCE PARKER knew, or had reasonable cause to believe that the defendant resided in the State of New York.

Thirdly, that on or about September 20, 1975 CLARENCE PARKER was not a resident of the State of New York and that on September 20, 1975 , the defendant did aid or abet or counsel or induce or procure CLARENCE PARKER to transfer or deliver the fire arms described in the indictment.

Lastly, as to this count, the defendant acted knowingly and wilfully.

As to, - - as I have indicated, one of the elements is that the defendant did sell or deliver. The Government must establish beyond a reasonable doubt that the fire arms specified in the indictment were sold or delivered by PARKER and I instruct you to find beyond a reasonable doubt that the defendant, that PARKER sold the fire arms in question, or delivered them, but in applying the words "sell and deliver," you must use your good common sense and not apply any technical interpretation to these words.

To sell, means to transfer to another for a price,



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usually to be paid in money. To deliver, means simply to transfer possession voluntarily to someone else.

Now, the fact that the defendant, that the person named in the indictment is CLARENCE PARKER, was the person who made delivery is not controlling. But, because this particular count charges that the defendant aided and abetted CLARENCE PARKER in the transfer and delivery of the guns in question, I will explain to you more fully the provisions of the statute which relates to aiding and abetting but the section of the Title 18 of the United States Code referred to as Section 2, provides that whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, may be regarded and punished as a principle and whoever wilfully causes an act to be done which directly is performed by him or another, would be an offense against the United States, is punishable as a principle. And by that I refer to the words, "aid and abet."

So it is that any person who commits an act in violation of a criminal statutes, commits a crime. It is also a crime to aid or abet or induce another person to commit such an act.

This offense is based on the legal principle that any one who aids, abets or induces another to commit an illegal act is himself, guilty of committing the illegal act.

Now, what does this mean? It means that to find the defendant aided or abetted PARKER to commit a crime, CLARENCE PARKER, you must find that the aiding and abetting the defendant in some way associated himself with the criminal venture.



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That he participated in it as in something he wished to bring about or, in other words, that he sought by his action to make it succeed. That he had some stake in the success. Thus, in order to find the defendant guilty of aiding and abetting, you must of course, find something more than mere knowledge on his part, that a crime was being committed, for a mere spectator at a crime or to a criminal offense, is not a participant. But in order to convict it is not necessary that you find the defendant, himself, did all of the acts.

If the defendant caused an act to be done, which if directly performed by him would be an offense against the United States. The crime can be considered as if the defendant, himself, had done the act.

Thus, participation by the defendant may be shown by any act which you find was committed by the defendant which involved his participation in the crime and it is sufficient that the Government establish beyond a reasonable doubt that the defendant showed by what he said or did, that he sought to accomplish the success of the crime.

Counts 7, 8 and 9, the Grand Jury charged in Counts 7, 8 and 9, the Grand Jury charged that on or about September 20, 1975, in the District of Vermont, CLARENCE R. PARKER in connection with the acquisition and attempted acquisition of the fire arms listed below from the licensed dealers set forth below, unlawfully, willingly and knowingly, did make false and fictitious oral and written statements, intended and likely to deceive said dealers with respect to a fact material to



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the lawfulness of the sale and the disposition of the fire arms, under the provisions of Chapter 44 of Title 18 of the United States Code, to wit , the name of the transferee of the fire arms. And on or about September 20, 1975, in the District of Vermont, the Grand Jury charged that ROBERT P. GIALLANZO and GEORGE W. SORIENTI, the defendants did unlawfully, willingly and knowingly aid, abet, counsel, command induce, procure and cause CLARENCE R. PARKER to commit the above offenses against the United States, in violation of Title 18. And the fire arms are described with the same particularity as before, namely, the .22 Magnum caliber high-standard Derringer and the licensed dealer, of that fire arm, was CLAPP'S Sporting Goods Store and is designated in Count 7.

Count 8 specifies a .38 special caliber Colt Cobra and the licensed dealer of that weapon was CLAPP'S Sporting Goods Store.

Count 9, charges and specifies a .38 caliber Iver Johnson revolver and the licensed dealer of that involved in that transaction was J. GALANES AND SONS.

Counts 7, 8 and 9 of the indictment, are based upon Section 922A6 of Title 18 of the United States Code, which provides that it shall be unlawful for any person in connection with the acquisition or attempted acquisition of any fire arm from a licensed dealer, knowingly to make any false or fictitious oral and written statements, intended or likely to deceive such dealer with respect to any fact material to the lawfulness of the sale or other disposition of such a



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fire arms.

Now, in order to sustain the charges asserted in Counts 7, 8 and 9 of the indictment, the Government must establish beyond a reasonable doubt as to each of these counts.

First, that on or about September 20, 1975, CLARENCE PARKER did make a false or fictitious oral or written statement. That is, he stated he was purchasing the fire arms described in these counts for himself.

Secondly, that said statements by CLARENCE PARKER were made in connection with the acquisition of the fire arms that are specified.

Thirdly, that such statements were intended and likely to deceive a gun dealer with respect to a fact material to the lawfulness of the sale or other disposition of the fire arm.

Fourth, that the fire arms described in these counts, namely, 7 8 and 9, were acquired from a federally-licensed retail gun dealer.

Fifth, that on or about September 20, 1975, the defendant did aid or abet or counsel or induce CLARENCE R. PARKER to make the false statements.

Sixth, that the defendant acted knowingly and wilfully unlawfully.

As to the first element of this offense, it is the burden of the Government to establish beyond a reasonable doubt that at the time in question, CLARENCE PARKER did make a false or fictitious oral or written statement, in stating he was purchasing the fire arms for himself.



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Secondly, that such statements by PARKER were made in connection with his acquisition of the fire arms in question and that the statements were intended to deceive the gun dealers with respect to a fact material to the lawfulness of the sale.

As to this element, there is little if any dispute that the CLAPP's Sporting Goods Store and the GALANES & SONS, were federally-licensed retail gun dealers, doing business in Brattleboro, Vermont and the defendant has, in substance, conceded that and this element of the offense has been, in support of this claim, the Government has introduced certain exhibits to establish the official record of the licensing of CLAPP'S Sporting Goods Store and GALANES & SONS.

Nevertheless, because the Government has the burden of proving each element of the offense, beyond a reasonable doubt, you must still find that this element of the offense has been satisfied.

The fifth element is that of aiding and abetting that on or about September 20, 1975, the defendant did aid, abet or counsel or induce CLARENCE PARKER to make these statements. And I have already referred to the law regarding or what constitutes aiding and abetting and I will not repeat that, nor the element of the offense the defendant acted willfully and knowingly. I have previously discussed those two elements of the offense that you should bear in mind that the same instructions apply to counts 7, 8 and 9 as previously given in the preceding count as it relates to that subject matter.



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You will also bear in mind that each element of the offense must be proved by the Government, beyond a reasonable doubt.

Now, Count Ten of the indictment charges the defendant and others with conspiracy among themselves to violate the fire arms laws of the United States. Count Ten of the indictment reads as follows: "That from on or about the first day of June 1975, continuing thereafter up to and including the date of the indictment in the District of Vermont and elsewhere, ROBERT GIALLANZO and GEORGE W. SORIENTI and CLARENCE R. PARKER and WAYNE E. PARKER, named herein as co-conspirators, wilfully and knowingly did combine, conspire, confederate and agree together with each other and with other persons at that time to the Grand Jury unknown, to commit offenses against the United States, namely to violate Section 2, which is the aiding and abetting statute, Section 922 and 924 of Title 18 of the United States Code and it was a part of that conspiracy according to the indictment, that the defendants and co-conspirators, would unlawfully, wilfully and knowingly and in connection with the acquisition and attempted acquisition of fire arms from licensed dealers, make false and fictitious oral and written statements which intended and were likely to deceive the dealers with respect to facts material to the lawfulness of the sale and disposition of the fire arms, under the provisions of Title 18, Chapter 44 of the United States Code and in violation of Title 18 of the United States Code, Section 924A and 2.



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Two, unlawfully, wilfully, and knowingly, transport into the State of New York, where the defendants resided, fire arms purchased and otherwise obtained by the defendants outside the State, in violation of Title 18, 922A3 and 922-4 and

Third, did unlawfully, wilfully and knowingly transfer, sell, trade, give and deliver fire arms to persons whom the defendants and the co-conspirators, knew and had reasonable cause to believe resided in a state other than that in which the person making the transfer, sale, delivery and so forth, resided at the time of the transfer, sale and delivery and in furtherance of the conspiracy and to effect the objects thereof, the following overt acts were comitted in the District of Vermont, One, on September, and elsewhere:

One, on September 20, 1975, ROBERT GIALLANZO and GEORGE W. SORIENTI traveled to Brattleboro, Vermont.

Secondly, second overt act alleged, is that on September 20, 1975, ROBERT GIALLANZO and GEORGE W. SORIENTI, CLARENCE PARKER and WAYNE PARKER, met together in Brattleboro, Vermont.

Third, on September 20, 1975, CLARENCE PARKER entered CLAPP'S Sporting Goods Store, 153 Main Street, Brattleboro, Vermont, that on September 20, 1975, CLARENCE R. PARKER, entered J. GALANES & SONS store, at 116 Main Street, Brattleboro, Vermont.

Now, Count 10, charges Mr. GIALLANZO with violating the federal law against criminal conspiracy. The Congress has made a conspiracy to violate a federal law a crime, separate



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and distinct and different from the substantive crime which may be the object of the conspiracy. Thus, Congress has made it a crime for two or more persons to conspire to commit an offense against the United States, when one or more of such persons does any act to effect the object of a conspiracy.

What is a conspiracy? A conspiracy may be defined as a combination of two or more persons who by concerted action, seek to accomplish a criminal or unlawful purpose.

The gist of the offense is the unlawful combination or agreement to violate the law. Conspiracy has been said to be a partnership in a criminal purpose.

To constitute a conspiracy, it is not necessary that two or more persons should meet together and enter into an explicit, formal agreement for an unlawful scheme, nor is it required that they should directly by words or in writing, state their unlawful schemes to be and the details of the plan or the means by which the unlawful scheme is to be carried out.

Conspirators do not ordinarily put their agreements in writing, nor do they make public their plans. By its nature, a conspiracy is usually secret in its origin and execution. The agreement is generally a matter of inference, deduced from the acts of persons accused, done in pursuit of an apparent criminal purpose.

It is sufficient if two or more persons in any manner, or through any contrivance, impliedly or tacitly, came to a mutual understanding to commit an offense against the United



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States and that one or more of them committed an overt act in furtherance of the conspiracy.

If two or more persons knowingly work together in any way in furtherance of the unlawful scheme each participant becomes a member of the conspiracy, although his part therein may be a subordinate one. Or, may be executed at some distance, or at a different time from the other conspirators.

All of the conspirators need not have originally conceived the conspiracy, or participated in it at its inception and it is not important who originated the conspiracy. Those who come in late with knowledge of the aims and purposes of the conspiracy and cooperate in the common effort to obtain the unlawful result, become parties to such conspiracy.

The offense is a crime when the unlawful agreement or combination is made and any single overt act to effect the object of the conspiracy if thereafter done by the, by at least one of the conspirators, is attributable to all of the conspirators. For the act of one conspirator done in furtherance of the conspiracy, becomes the act of all.

Now, the overt act need not be criminal in nature. It may be entirely innocent in itself, such as an act of a man walking across the street. It must, however, be an act which tends to accomplish the plan or conspiracy and must be knowingly be done in furtherance of the object or the purpose of the conspiracy.

A conspiracy is not ended as long as the evidence shows an intention to continue it. Each alleged conspirator who was



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the agent of the other at some time during the life of the conspiracy, remains an agent during all of its existence, except that a conspirator has the right to withdraw from the execution of the conspiracy, but the withdrawal requires affirmative and effective action on his part.

As I indicated, the indictment charges that the conspiracy existed from on or about June first, 1975 and continued up to the date of the indictment, which is sometime in December of last year.

You need not find that the conspiracy began exactly on June first, 1975 and came to an end on December 11, 1975. The Government is not called upon to prove that the conspiracy existed over the whole course of time which is alleged in the indictment.

If you find that within that period all of the elements of this crime have been demonstrated to your satisfaction, beyond a reasonable doubt, then the crime becomes complete and the fact that the Government did not show it being carried on as early or as long as the indictment says in itself, is not of any importance, as long as the elements of the crime are concerned.

If you find that a conspiracy existed as the indictment has charged, you must then determine whether the defendant GIALLANZO was a member of the conspiracy.

In determining whether the defendant became a member of the conspiracy, you must determine not only whether he participated in it but whether he did so with knowledge of its unlawful



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purpose.

Did he join with an awareness at least some of the basic aims and purposes of the conspiracy. Again, knowledge is a matter of inference from facts proved. It is not necessary that the defendant be fully informed as to the details of the scope of the conspiracy in order to justify any inference of knowledge on his part.

To have guilty knowledge, the defendant need not know the full extent of the conspiracy in all of its activities and actors. But, in this connection, I want to caution you that the mere association of one or more of the conspirators, does not make one a member of the conspiracy, nor is knowledge without participation sufficient.

It is necessary that the defendant participate with knowledge of at least some of the purposes of the conspiracy and with intent to aid the accomplishment of those unlawful ends and that the defendant wilfully participated in the plan with intent to advance or further some object of the conspiracy.

Again, before the Jury may find the defendant has become a member of the conspiracy, the evidence on this point, as in all other essential elements must show beyond a reasonable doubt that the conspiracy was knowingly formed and the defendant wilfully participated in the unlawful plan.

If you find that the defendant knowingly participated in the conspiracy as charged in the indictment, the extent of his participation has no bearing on his guilt or innocence.

The guilt of a conspiracy is not to be measured by the

extent or the duration of his participation, even if he participated in a degree more limited than that of his co-conspirators, he is equally culpable so long as he was in fact, a conspirator.

When it appears beyond a reasonable doubt from the evidence in the case that a conspiracy was formed and existed and the defendant was one of its members, the statements thereafter knowingly made and the acts thereafter knowingly done by any person likewise found to be members, may be considered by the Jury as evidence in the case, as to the defendant found to have been a member. Even though the statements and acts may have occurred in the absence and without the knowledge of the defendant, provided such acts and statements were knowingly made and done during the continuance of the conspiracy and in furtherance of one or more of its objects.

Otherwise, any admission or incriminating statement made or act done outside of court by one person, may not be considered as evidence against any person who is not present and did not hear the statement made or see the act done.

Therefore, statements of a conspirator which are not in furtherance of the conspiracy, may be considered as evidence only against the person who may have happened to have made such statements.

With these principles as your guide, you must determine whether the Government has proved beyond a reasonable doubt each of the following essential elements:

First, that at some time during th period from on or



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about June 1, 1975 to December 11, 1975 an agreement was, existed, between at least two of the conspirators.

Secondly, that it was an object of this agreement to transport fire arms from New York, - from Vermont to New York, or to aid and abet making false and fictitious oral or written statements in the acquisition of fire arms.

In order to find, third, in order to find the defendant guilty of the crime of conspiracy, you will recall I instructed you that guilt is personal, you must find beyond a reasonable doubt that the defendant knowingly and wilfully associated himself with the conspiracy and participated in it and,

Fourth, that one of the conspirators, knowingly committed at least one of the overt acts set forth in the indictment at or about the time and place specified.

The overt acts, as I have indicated, are these, - and the Government must establish beyond a reasonable doubt that one or more of these acts were in fact, overt acts, were in fact, performed:

First, on September - the first overt act alleged is on September 20, 1975, ROBERT GIALLANZO and GEORGE W. SORIENTI traveled to Brattleboro, Vermont.

The second overt act is that on the same day, ROBERT GIALLANZO and GEORGE SORIENTI, CLARENCE PARKER and WAYNE PARKER met together in Brattleboro, Vermont.

Third, on September 20, 1975, CLARENCE PARKER entered CLAPPS Sporting Goods Store on Main Street, Brattleboro.

The Fourth overt act alleged is that on the same day,



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October 20, 1975, CLARENCE PARKER entered J. GALANES & SONS store in BRattleboro, Vermont.

If you find any one of these acts was done, or performed and that it was done in furtherance of the conspiracy charged in the indictment, then this requirement has been satisfied.

If you find that each of the elements of the offense have been proved, beyond a reasonable doubt, then you must return a verdict of guilty against Mr. GIALLANZO.

If, However, you are not convinced beyond a reasonable doubt that each and every element of the conspiracy count has been proved to your satisfaction, you must return a verdict of "not guilty".

You are here to determine the guilt or innocence of robert giallanzo from the evide ce in the case. You are not called upon to return a verdict as to the guilt or innocence of any other person or persons.

So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the accused, you should so find, even though you may believe one or more other persons are also guilty. But if any reasonable doubt remains in your minds after impartial consideration of all the evidence in the case, as to any particular count, it is your duty to find the accused "not guilty" of that count.

Now, as I previously indicated a separate crime or offense is charged in each count of the indictment. Each charge and the evidence pertaining to it, should be considered separately.



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The fact that you may find the accused guilty or not guilty as to one count, or one of the offenses charged, should not control your verdict as to any other offense charged.

You must consider each and all of the counts presented.

There has been some reference in the evidence to punishment. Now, under your oath as jurors, you cannot allow a consideration of the punishment which might be inflicted upon the defendant if convicted, to influence your verdict in any way or in any sense enter into your deliberations.

The duty of imposition of sentence rests exclusively upon the Court. Your function is to weigh the evidence in the case and to determine the guilt or innocence of the defendant, solely upon the basis of such evidence and the law. You are to decide the case upon the evidence and the evidence, alone and you must not permit any assumption, conjecture or sympathy or any inference not warranted by the facts and so proven to your satisfaction.

Your verdict must represent the considered judgment of each and all jurors. In order to return a verdict, it is necessary that each juror agree thereto.

Your verdict must be unanimous. It will be announced by your Foreman in open court when it has been reached. If it becomes necessary during your deliberations to communicate with the Court, you may send a note by the Marshal, signed by your Foreman, specifying the question which you wish to have answered.

No member of the Jury should ever attempt to communicate



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with the Court by any other means than a signed, written note and the Court will not communicate with any member of the Jury on any subject, touching the merits of the case, otherwise than in writing or orally here in open court.

Also, if it becomes necessary for you to refer to the testimony of any particular witness or some portion of that testimony, the Court requests that your Foreman state the testimony that you wish to have referred to, present the request to the Marshal and signed by the Foreman and he will bring it to me and as with all other requests I will consider it and determine what action is appropriate, under the circumstances, but if you wish to refer to the evidence, it takes the Reporter some time to search through his Stenotypy notes to find out exactly the location of the reference that is located in those notes and if you will give us as much advance notice on that as possible, it will expedite the matter as the reporter will search the record and find the part that you wish to have read and then you will be called into Court and notified that we are ready to proceed and that portion of the evidence will be read to you at that time.

Now, ladies and gentlemen, you have been chosen as jurors in this case to try the issues of fact presented by the allegations of the indictment against the defendant ROBERT GIALLANZO and his denial of those allegations, which is implicit, of course, in his plea of "not guilty".

You are to try the issues that have been presented to you, according to the oath which you have taken as jurors in



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which you have promised that you would well and truly try the issues raised in this case and render a just verdict, both for the defendant and the public.

We expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated in these instructions and reach a true and just verdict.

The Court will entertain objections to the charge.

AT THE BENCH OUT OF HEARING BY THE JURY

MR. NEIDERMEIER: I just have one request that we would request the Court to instruct the Jury that on the consolidated Counts One and Two, that it is not necessary to find transportation and delivery of all three but merely the one. I think that is the purpose of the consolidation. It is not necessary to find that they carry all three counts, merely the one count, but I think that the Jury is confused in the consolidation that they carry all three.

MR. MURPHY: I would object to that. Judge, if you are going to charge that, I request you have my charge "dictatate" that the mere knowledge that a weapon is in the car, is not sufficient for the defendant to be convicted on the first 3 counts. I don't believe that you went into the question of knowledge on 4, 5 and 6, - 7, 8 and 9, rather, but you never informed them on the transportation counts that if he has knowledge that the weapon is in the car, that in and of itself is not sufficient for them to convict him, that he must participate.

THE COURT: I charged knowledge.

MR. MURPHY: Not in the first one.

THE COURT: The question of the -

MR. MURPHY: You told them that he must have knowledge that it's in the car but you never told them that the fact that he has knowledge, that the weapon is in the car, is not sufficient, that mere knowledge that the weapon is there, is not sufficient for a conviction. In other words, you are granting the impression that if he knows the guns were in the car, he is guilty of transporting it. If it's the other guy's guns and it's the other guy's car, and if he puts it in the car and he has knowledge that the guy put it in the car, that doesn't mean he is guilty.

THE COURT: I think I will leave it the way it is.

MR. MURPHY: Well, Judge, especially in view of the fact that you are now going to charge them in regard to one gun, that's if they find, that they can find that if there is one gun transported, then he is guilty. Now, you are planting the impression on them that all he has to know, is, that the gun is in the car. He is in the car and he is guilty and that's not the law.

THE COURT: Any other objections?

MR. MURPHY: Judge, can I renew my request in view of the fact that you are charging about the one gun that you informed them that the fact that Mr. GIALLANZO knows it's in the car, and that he's in the car, is not sufficient as a matter of law, -- you charged them that on the other portion that mere knowledge is not sufficient and I would request that

you charge them as to this, because I believe that's the law in this area that mere knowledge is not sufficient.

You've given them a charge, Judge, with regards to what I believe the case is GIALARDI, I can get the case for you in two seconds, that the question of mere knowledge right down in the book, mere knowledge alone, is not sufficient and the fact that you are now charging them that the one gun is in the car is sufficient to convict him on the count one, that mere knowledge that it's in the car, is not sufficient. You have charged, you have the charge there on mere knowledge, but you didn't give it to them on the first one.

THE COURT: I believe I did but at least out of an abundance of caution, I will refer to it. I charged wilfully and knowingly as to each one of the counts.

MR. MURPHY: Right, you charged knowingly but Judge, you never informed them that mere knowledge is not sufficient. In other words, the impression is that he knows the gun's in the car, that therefore, he's guilty, whereas, on the other counts, Judge, you charged them that mere knowledge that a situation exists is not sufficient. However, on the transportation, one, you never informed them as of that and I would hate to think they got the impression in their minds that because the other guy puts the gun, buys the gun, puts it in the car and he knows it's in the car, that he is guilty. And that's not the law and I believe you have the charge right

you. It is right down in my - I have it right down there in my case.

THE COURT: Well, all right.

(Mr. Murphy left the Bench to bring a document to the Court)

THE COURT: I will say while, during this brief interval that any and all of the exhibits that you desire in the case will be available to you in the Jury room. The parties will be charged in making certain that only the exhibits that have been properly received are delivered to the Clerk or the Marshal for your use during the course of your deliberations.

(AGAIN, OUT OF HEARING BY THE JURY)

MR. MURPHY: We gave him that charge on aiding and abetting and that is what I'm requesting you give them on the first three counts. But you didn't mention that with regards to the gun being in the car.

THE COURT: Members of the Jury, it has come to my attention that as to the consolidated counts, first consolidated count of the indictment, that I have referred to each of the weapons that were specified. If you find beyond a reasonable doubt that the Government has established the fact that the defendant transported the fire arms that were described to you, any one of the fire arms described to you, on or about September 20, 1972, at a time when the Defendant was a resident of New York State and that theyare transported, any one or more of those weapons were transported from Vermont to New York, then that would be sufficient, provided, of course, that you find that the defendant acted knowingly and wilfully.

Also, in that connection, the mere fact that the defendant knew a gun was being transported in the vehicle in which he was a passenger, will not in and of itself, establish him to be guilty of the first consolidated count.

In other words, you must find something more than mere knowledge on his part that the crime of illegal transportation was being committed, for a mere spectator at a crime is not a participant. You must find that the defendant was an actual participant and that he did so, knowingly and wilfully, in the transportation of the weapons in question. One or more of the weapons in question. Any, - is that - -

WITHOUT THE HEARING OF THE JURY:

MR. MURPHY: No, that's it, Your Honor.

THE COURT: Will the Marshal come forward to be sworn?

(MARSHAL DULY ADMINISTERED OATH BY THE CLERK AT 12:05 NOON)

THE COURT: Ladies and Gentlemen, you may take the case and since it's past the hour of noon if your, I'm sure the Marshal will make some arrangements to provide you with your noon meal, if that's your desire. It's a matter for your decision but he usually is foresighted enough to take care of those essentials and if you'll notify the Marshal when you would like to have your noon meal or whether you wish to have it brought in by way of sandwiches, why, I am sure he will accommodate you in that regard. Ladies and Gentlemen, you may take the case.

(JURY WITHDREW TO THE JURY ROOM TO DELIBERATE UPON A VERDICT AT 12:07 NOON)

IN CHAMBERS. 2:12 p.m.

THE COURT: The Marshal has handed the Court a note which reads: "We would like to have the list of charges." I assume they mean the list of charges read. Signed FLOYD SUMNER, who is the Foreman.

That is the way I interpret the note. I don't know.

MR. HUGHES: You mean, typed? The Ten counts?

THE COURT: Yes, the number of charges that are alleged, asserted in the indictment.

MR. MURPHY: In other words, are they referring to that they want a sheet, a verdict sheet?

THE COURT: I don't think so.

MR. MURPHY: Or that they just want -

THE COURT: I don't, well, what the charges are.

MR. MURPHY: What the charges are?

THE COURT: I mean how they are enumerated.

MR. MURPHY: In other words, Charge one, charge 2, charge 7, 8, 9, 10?

THE COURT: First 7,8,9 and 10. I am not sure that is what they want but I will ask the Foreman.

MR. MURPHY: Okay.

MR. NEIDERMEIER: Will Your Honor read the charge?

THE COURT: I will indicate what they are.

(All present in Chambers withdrew to the Court Room where at 2:18 p.m. all were present in the court room in the presence of the Jury)

THE COURT: Mr. Foreman, the Court has received a note

which states as follows: "We would like to have the list of charges," and bears your signature.

THE FOREMAN: Yes, sir.

THE COURT: By that do you mean the number of charges as stated in the indictment?

THE FOREMAN: Yes, Your Honor.

THE COURT: The indictment as presented contain ten counts of violation of the, the alleged violations of the laws of the United States. The Court has ordered that Counts 1, 2 and 3, be consolidated into a single count, which the Court now, or during the course of my instructions, referred to as the first count.

Counts 4, 5 and 6 were also consolidated into a single count which I referred to during the course of the instructions as the second count.

Counts 7, 8, 9 and 10 remain as numerically designated by the Grand Jury.

The first count as consolidated charges the defendant with wilfully, unlawfully and knowingly transport the fire arms that were listed in the indictment, from Vermont into the State of New York. New York being the place where the defendants resided and Vermont being the place where the fire arms were purchased, or otherwise obtained

The first count as consolidated charges illegal transportation from the State of Vermont to the State of New York where the defendant resided.

The second counts contains the count, the original

counts 4, 5 and 6 and in essence, charges that CLARENCE PARKER did transfer, sell, give and deliver to ROBERT GIALLANZO, certain fire arms which are the same as those, the three that appeared in evidence and have been designated as certain weapons by serial number and other description, and that charges that CLARENCE PARKER did transfer and deliver to the defendant, ROBERT GIALLANZO, who this CLARENCE PARKER knew and had reasonable cause to believe, resided in the State of New York, a state other than that in which PARKER resided, at the time of the alleged transfer of the guns that were specified in the counts.

Now this charge, the second count, charges that the defendant did unlawfully, wilfully and knowingly, aid and abet command, induce, procure and cause PARKER to violate the offense that is alleged, namely, of transferring from, PARKER knowingly transferring to persons who he knew, or had reason to believe resided outside of the State.

This is the charge that substantially claims, not that the defendant made the transfer but that he induced and caused PARKER to make the transfer and delivery of the weapons that were specified and they being the same weapons that were referred to in the first count.

Counts 7, 8 and 9, remain as they were originally designated and charge that on or about September 20 in the District of Vermont, CLARENCE PARKER, in connection with the acquisition of, attempted acquisition of the fire arms that were specified from licensed dealers, wilfully, did wilfully and knowingly make

certain false, fictitious and oral statements, which were intended to deceive the dealers, in regard to a fact material to the lawfulness of the sale. And this Count 7, 8 and 9, charge that the defendant did unlawfully, wilfully and knowingly aid and abet counsel and induce PARKER to make such false statements to the dealers in his procurement of the weapons in question.

In Count Ten, is the conspiracy count.

Now, does that indicate or comply with your request, or do you wish me to go into more detail on the conspiracy count?

THE FOREMAN: Yes, sir.

THE COURT: That answers your question?

THE FOREMAN: Yes, sir.

THE COURT: Thank you, ladies and gentlemen, you may return to your deliberations.

(THE JURY THEN AT 2:25 P.M. RETURNED TO THE JURY)

THE COURT: This may be marked Court's Exhibit #1 and placed in the file.

(THE JURY THEN AT 4:38 P.M. RETURNED TO THE COURT ROOM TO DELIVER THEIR VERDICT IN OPEN COURT)

THE COURT: You may proceed.

THE DEPUTY CLERK LAVICTORIE: Mr. Foreman, has the Jury reached a verdict in the case of The United States of America versus ROBERT P. GIALLANZO:

THE FOREMAN: We have.

THE DEPUTY CLERK: What is your verdict as to the first

consolidated count of the indictment?

THE FOREMAN: Guilty on the first count, -

THE DEPUTY CLERK: Sir, I will read each one.

THE FOREMAN: All right, sir.

THE DEPUTY CLERK: I will repeat this. What is your verdict as to the first consolidated count of the indictment?

THE FOREMAN: Guilty.

THE DEPUTY CLERK: What is your verdict as to the second consolidated count of the indictment?

THE FOREMAN: (No response)

THE DEPUTY CLERK: Mr. Foreman?

THE COURT: You will stand and answer each question, if you will.

THE FOREMAN: There was three counts and -

THE DEPUTY CLERK: The first count.

THE FOREMAN: Consolidated?

THE DEPUTY CLERK: First consolidated count of the indictment and there was a guilty verdict?

THE FOREMAN: Right.

THE DEPUTY CLERK: Okay, what is your veraict then to the second consolidated count of the indictment?

THE FOREMAN: It was consolidated in three, was it?

THE DEPUTY CLERK: Yes.

THE FOREMAN: Guilty.

JURORS: No, he's made a mistake. He's mixed up.

THE COURT: Counts 4, 5 and 6 you will recall, were consolidated and it is the count which the Court referred to as

the second count, of the indictment. If you will, - you may ask the Foreman, Mr. Clerk, what the verdict of the Jury is as to the second count.

THE DEPUTY CLERK: Okay, what isyour verdict as to the second consolidated count of the indictment, which would be counts 4, 5 and 6?

THE FOREMAN: Not guilty.

THE DEPUTY CLERK: Not guilty? What is your verdict as to Count 7 of the indictment?

THE FOREMAN: Not guilty.

THE DEPUTY CLERK: And what is your verdict on Count 8 of the indictment?

THE FOREMAN: Not guilty.

THE DEPUTY CLERK: What is your verdict on Count 9 of the indictment?

THE FOREMAN: Not guilty.

THE DEPUTY CLERK: What is your verdict on Count 10 of the indictment?

THE FOREMAN: Not guilty.

THE DEPUTY CLERK: Is this the unanimous verdict of the Jury?

THE FOREMAN: Yes, it is.

THE DEPUTY CLERK: So say you all, ladies and gentlemen?

JURORS: (Nodding heads)

THE COURT: Very well, thank you. Is there any desire to have the jury polled?

MR. MURPHY: Judge, I'd like the Jury polled as to the

first count, please.

THE COURT: Will the Jury please rise?

THE DEPUTY CLERK: Mr. SUMNER, the Foreman, is that your verdict?

MR. SUMNER: It is.

THE DEPUTY CLERK: Mrs. DOROTHY WESLEY, Juror #2, is that your verdict?

MRS. WESLEY: Yes, it is.

DEPUTY CLERK: Mr. Daniel PETERMAN, Juror #3, is that your verdict?

MR. PETERMAN: Yes, it is.

THE DEPUTY CLERK: Mrs. MARY BEAUDRY, Juror #4, is that your verdict?

MRS. BEAUDRY: Yes.

DEPUTY CLERK: Mrs. BARBARA BEAUCHAMP, Juror #5, is that your verdict?

MRS. BEAUCHAMP: Yes.

DEPUTY CLERK: Mrs. BARBARA HUBBARD, seated in Seat #6, is that your verdict?

MRS. HUBBARD: (Nodded head)

DEPUTY CLERK: Mr. JOHN FABIAN, Juror #7, is that your verdict?

MR. FABIAN: Yes, it is.

DEPUTY CLERK: Mrs. Jayne WEINHAGEN, Juror #8, is that your verdict?

MRS. WEINHAGEN: Yes, it is.

DEPUTY CLERK: Mrs. FREDA AHONEN, Juror #9, is that your

DEPUTY CLERK: Mrs. ESTHER COLEMAN, Juror Number 10, is that your verdict?

MRS. COLEMEN: Yes.

DEPUTY CLERK: Mrs. MARY SHAW, Juror #11, is that your verdict?

MRS. SHAW: Yes, it is.

DEPUTY CLERK: Mrs. BETTY BRIGGS, Juror #12, is that your verdict?

MRS. BRIGGS: Yes, it is.

THE COURT: The Court will receive your verdict, ladies and gentlemen and you may be seated.

The Court will, Mr. Clerk, since these jurors have worked through this week do you have enough other jurors to function?

DEPUTY CLERK: Yes, YOur HOnor.

THE COURT: Since you have worked through this week you will be excused until notified by the Clerk as to when to report. The other members of the panel or some of the other members of the panel will be reporting on Monday but it will not be necessary for you to do so and the Clerk will notify you as I have indicated, when it will be for you to return.

The Court wishes to thank you for your attendance during the course of this trial and you will be excused until notified by the Clerk.

The, as I have previously indicated your judgment, your verdict will be received and you will be excused until the time as I have indicated. I hope you have a pleasant Easter holiday.

Thank you, very much.

(JURY WITHDREW FROM THE COURT ROOM AT 4:44 p.m.)

THE COURT: In this case the Court will order a pre-sentence investigation and in preparation of the pre-sentence report the, for sentencing will be set at the time the pre-sentence investigation has been completed and the defendant his counsel will be advised when you are next to appear.

MR. MURPHY: May I have a time to make motions to address myself to the verdict, because I believe it is absolutely and completely inconsistent as to how it could come in with that verdict on the first count and not guilty verdict of all of the other counts plus, I believe, that it'sinconsistent with the evidence in the case.

THE COURT: Well, you'll have plenty of opportunity to raise those questions but the time for presenting such a motion is governed by the Federal Rules of Criminal Procedure.

MR. MURPHY: Okay.

THE COURT: And you should comply with, certainly with those rules and in filing a post-verdict motion, Mr. Murphy. The Court wishes to thank counsel for the Government as well as counsel for the defendant for their participation in the trial of this case. Are there any questions about bail?

MR. HUGHES: Your Honor, the Government would at this time respectfully request that bail be continued in the same status.

THE COURT: Bail will continue in the same as previously set.

MR. MURPHY: Thank you.

THE COURT: And you should address yourself to the rules in regard to the post-verdict -

MR. MURPHY: All right, thank you, Judge.

THE COURT: - motions, Mr. Murphy. The Court will recess until tomorrow morning at 9:30. (4:46 p.m.).

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CERTIFICATE

I, Herman J. VESPER, Official Court Reporter, United States District court, For The District of Vermont, hereby certify that the foregoing is a complete and true transcript of the proceedings in the case of THE UNITED STATES OF AMERICA versus ROBERT P. GIALLANZO, Criminal Action No. 75-86, which was tried before The Honorable JAMES S. HOLDEN, Chief, U.S. District Judge, For The District of Vermont, and a Jury, at Rutland, Vermont, 13, 14 and 15 April 1976.

Herman J. Vesper
OFFICIAL COURT REPORTER

Brattleboro, Vermont

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UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

Filed April 30, 1976
George L. Victoria
Deputy Clerk

----------X

UNITED STATES OF AMERICA,

- v -

ROBERT P. GIALLANZO,

Defendant.

NOTICE OF MOTION

Crim. No. 75-86

----------X

S I R S:

PLEASE TAKE NOTICE that upon the annexed affidavit of STEPHEN G. MURPHY, attorney for the defendant, ROBERT P. GIALLANZO, a motion will be made on the day of , 1976 in the U.S. District Court at the courthouse located at the Federal Building, Rutland, Vermont, before Honorable Judge Holden for a judgment of acquittal, pursuant to Federal Rule of Criminal Procedure 29, and for a new trial, pursuant to Federal Rule of Criminal Procedure 33 on the ground that there is insufficient evidence to warrant a conviction and on the ground that the remarks in summation by the U.S. Attorney were so prejudicial as to violate the defendant's due process of law and for such other and further relief as to this Court may seem just and proper.

Dated: Kew Gardens, New York
April 27, 1976

Yours, etc.

STEPHEN G. MURPHY, ESQ.
MURPHY, SADOWSKI & KOEHLER
Attorneys for Defendant
125-10 Queens Blvd.
Kew Gardens, New York 11415
(212) 793-0200

A-378

TO: GEORGE W.F. COOK
U.S. Attorney
District of Vermont
Federal Bldg.
Rutland, Vt.

Attn: John R. Hughes, Jr.
Assistant U.S. Attorney

Hon. Judge Holden
U.S. District Court
District of Vermont
Federal Bldg.
Rutland, Vt.

James Carroll, Esq.
79 Center Street
Rutland, Vermont 05701

A-379

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

----------X

UNITED STATES OF AMERICA,

-v-

ROBERT P. GIALLANZO,

Defendant.

AFFIDAVIT IN SUPPORT OF MOTION FOR A JUDGMENT OF ACQUITTAL AND A NEW TRIAL

----------X

STATE OF NEW YORK )
COUNTY OF QUEENS ) SS:

STEPHEN G. MURPHY,ESQ., being duly sworn, deposes and says:

1. I am the attorney of record for the defendant ROBERT P. GIALLANZO and I make this affidavit in support of his motion for a judgment of acquittal and a new trial.

2. The defendant was indicted by a Federal Grand Jury sitting in the District of Vermont and charged under Count I of the indictment with the crime of Transporting Firearms from the State of Vermont, where he did not reside, into the State of New York, where it is alleged that he resided,in violation of T 18 U.S.C. section 922 a 3 and T 18 U.S.C. 2.

Under Counts 4, 5, and 6 of the indictment the defendant was charged with Aiding and Abetting One Clarence Parker with a Transfer of Firearms to the defendant in violation of T18 section 922 a 5.

Under counts 7, 8, and 9 the defendant was charged with Aiding and Abetting said Clarence R. Parker In the Making of

False Statements Relating to the Purchase of Firearms in Violation of T 18 922 a 6 and 924.

Under Count 10 of the indictment the defendant was charged with Conspiracy to Commit the Crimes set forth in the Preceding Counts.

3. The trial of the present indictment was commenced on Tuesday, April 20th and a verdict was rendered on Thursday, April 22nd, in which the defendant was convicted of the first count of the indictment, Transporting Firearms From Vermont to New York, the State of Residence. The defendant was acquitted of all other counts.

4. The basis of the present motion for a judgment of acquittal is that there was not sufficient evidence to warrant a conviction with regard to the allegation that the defendant transported firearms across state lines to a state of which he is a resident were on the theory that he actually transported said firearms, or on the theory that he aided and abetted said transport and was, therefore, lible as a principal, pursuant to T 18 USC 2.

5. Looking at the evidence in the light most favorable to the government, the evidence showed the following:

The defendant, who resided in Queens County, New York State, the day before the events in question, and another, who it was shown resided in the same place, a month later embarked from Queens by automobile and arrived in Vermont. The defendant was a passenger in the automobile. The automobile was driven

by his companion, and the automobile was registered in the name of the mother of his companion. In Vermont they approached, or were approached, by local youths, particularly one, Clarence R. Parker. The defendant's companion asked Parker to help in the purchase of guns. They went to three shops and the defendant's companion bought a 22 derringer and the defendant bought a 38 revolver with the aid of Mr. Parker, who executed the necessary application forms, representing that the purchaser(s) were Vermont residents and that Mr. Parker was the purchaser. There was testimony that the defendant tried out the feel of the 38 revolver while in the gun shop and that the defendant received a package containing the guns from Mr. Parker and placed it in the trunk of the automobile in which he was a passenger. One month later one agent Reilly journeyed to New York and arrested the defendant's companion, who admitted possession of the 22 derringer and surrendered it to Mr. Reilly.

6. At the outset it is apparent that in any event the evidence showed only that one gun crossed the Vermont-New York State line, that gun being the 22 derringer recovered in the possession of the defendant's companion in New York. Therefore, this is the only firearm the transportation of which may serve as a basis for a conviction under Count I of the indictment. There is, however, no evidence that the defendant GIALLANZO actually transported this derringer. Therefore, a finding of

guilt can only be predicated upon the theory that the defendant GIALLANZO aided and abetted the interstate transporation of said gun.

7. In order to find criminal liability under this theory, it is necessary for the evidence to show that the defendant GIALLANZO actually participated in some way with the interstate transporation of the gun in question, or that he willfully caused the transporation by another. T 18 USC 2 provides:

> "a. Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal.
>
> b. Whoever willfully causes an act to be done which, if directly performed by him or another would be an offense against the United States, is punishable as a principal."

The U.S. Supreme Court has interpreted this section, in order to find Aiding and Abetting, that the government show the defendant in some way associated himself with the venture, that he participate in it as in something he wishes to bring about, and that he seek by his action to make it succeed. Nye and Nissen v. U.S. U.S. 336 U.S. 613 69 S. Court 766 93 LED 919 (1949).

8. The evidence, however, does not show any conduct on the part of the defendant after the purchase of the firearm in question in Vermont. The question, therefore, arises as to whether or not there is any conduct in the State of Vermont by

the defendant which would allow a finding consistent with [illegible] and Nissen, supra.

9. In this regard it is important to note here that the defendant was indicted for conspiracy and that he was acquitted on that. There is necessarily a distinction between conspiracy and aiding and abetting with regard to the underlying acts which would allow a finding of guilt as to substantive charges. Proving a conspiracy is enough to find guilt as to substantive crimes committed by co-conspirators in furtherance of the conspiracy, but proof of conspiracy is not enough by itself to show guilt as to substantive crimes under an "Aided and Abetted" theory. U.S. v. Sall 116 F 2nd 745 (3rd circ. 1940). In other words, if the defendant had been found to have conspired to transport the firearm in question, he could have been found guilty of the substantive charge on that basis. He was, however, acquitted of conspiracy. Conspiracy, however, is the only way in which the defendant can be held culpable for transporting firearms on the basis of acts which are relatively removed from the act of transporting. The only evidence to connect the defendant with transportation is that he was a passenger in an automobile driven by his companion, that he purchased a firearm, which is not the firearm in question, and that he placed a package containing, among others, the firearm in question, in the car in which he was riding while in Vermont. There is no evidence that the gun in question was transported to New York at his behest

or that the automobile was under his control. Johnson v. U.S. 195 F 2nd 673 (4th circ. 1952) or that he furnished facilities for transportation. Mack v. U.S. 326 F 2nd 481 (8th circ. 1964). There is no evidence that the defendant was present in the car when the firearm was transported into New York or that he shared in the expenses of such transporation. Smyly v. U.S. 287 F 2nd 760 (5th circ. 1961). The inevitable conclusion is that there is no evidence to show that the defendant committed any act in furtherance of the transportation of the gun in question. In determining a motion under Rule 29 of the Federal Rules of Criminal Procedure the Court must treat each count of the indictment as a separate indictment and determine whether or not there is sufficient evidence to warrant conviction under each count. The evidence might have been enough to warrant a conviction of the substantive crime of transporting on the basis of a finding of conspiracy. The defendant was, however, acquitted of the conspiracy count. As has been said, the defendant cannot be convicted of the substantive charge of transportation on an "Aiding and Abetting" theory where there is no evidence that he caused such transportation or participated by means of an affirmative act in the facilitation of such transportation. There is nothing to show that the defendant was associated in any way with the enterprise of transporting the 22 derringer which was found in the possession of his companion in New York, or that the defendant had any personal interest in the transportation of that gun. Although the defendant's conduct might have been

prefatory to such transporting, it was not collaborative with such transporation. U.S. v. Moses 220 F 2nd 166 (3rd circ. 1955). Where the jury has not found an agreement to transport, i.e. the conspiracy count, it is hopelessly inconsistent for the jury to find Aiding and Abetting on the basis of the self same agreement. See Sealfon v. U.S. 332 U.S. 575, 92, LED 2 180, 68 S. Court 237 (1948), in which, however, the issue was double jeopardy. In conclusion, with regard to the defendant's motion under Rule 29, there is no evidence to show that the defendant actually engaged in conduct which aided in the transportation of the gun in question. The only way that such a finding could be mad is on the basis of a conspiracy theory, but the defendant was acquitted of conspiracy. There is not substantial evidence in the record to show that the defendant associated himself with the transportation of the firearm in question, that he participated in it as in something he wished to bring about, and that he sought by his action to make it succeed.

10. With regard to the defendant's motion for a new trial under Rule 33, the defendant relies upon the foregoing as one ground.

11. The defendant additionally relies on the following argument: In the government's summation the U.S. Attorney relied upon arguments calculated to inflame regional bias. He consistently referred to the defendant's character as a resident of the State of New York, as a "New Yorker", and to the character of witnesses for the government as "Vermonters". The import

of an argument was that "New Yorkers" come into the State of Vermont to take advantage of "Vermonters". Although proof of residency is an element of the government's case, when it is remembered that the jury was comprised of Vermont residents, the conclusion is inescapable that the government sought by its comments not to persuade the jury that the defendant was a "New Yorker", but that "New Yorkers" journey to Vermont in order to take advantage of residents of Vermont as a general proposition and that, therefore, the defendant is guilty. This syllogism is on its face defective. Proof of the prejudice that it caused the defendant is shown by the verdict, which is hopelessly inconsistent and not based upon sufficient evidence to sustain a conviction.

WHEREFORE, the defendant prays for an order pursuant to Rule 29 for a judgment of acquittal and in the alternative for a new trial, pursuant to Rule 33.

Stephen G. Murphy
STEPHEN G. MURPHY

Sworn to before me this
27th day of April, 1976.

Robert A. Sadowski

ROBERT A. SADOWSKI
NOTARY PUBLIC, State of New York
No. 41-3424975
Qualified in Queens County
Term Expires March 30, 1977

A-387

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF VERMONT

| | | |
|---|---|---|
| UNITED STATES OF AMERICA | ) | |
| | ) | |
| v. | ) | Criminal No. 75-86 |
| | ) | |
| ROBERT P. GIALLANZO | ) | |

RESPONSE OF UNITED STATES TO DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL, OR IN THE ALTERNATIVE, FOR A NEW TRIAL

The UNITED STATES OF AMERICA, by and through its attorney, George W.F. Cook, United States Attorney for the District of Vermont, hereby opposes defendant's motion and submits this memorandum of law in support thereof.

The defendant was found guilty by a jury of transporting firearms from Vermont to New York in violation of 18 U.S.C. §922(a)(3) and 18 U.S.C. §2. The defendant now contends that the Court should order a judgment of acquittal or, in the alternative, a new trial based on the insufficiency of the evidence.

In considering a motion for judgment of acquittal the Court must consider the evidence and all reasonable inferences in the light most favorable to the Government. United States v. Glasser, 315 U.S. 60, 80 (1942); Cartwright v. United States, 335 F.2d 919 (10th Cir. 1914). The Second Circuit has recently formulated its own standard to be used in the consideration of such a motion:

> The true rule, therefore, is that a trial judge, in passing upon a motion for directed verdict of acquittal, must determine whether upon the evidence, giving full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable in-

> ferences of fact, a reasonable mind might fairly conclude guilt beyond a reasonable doubt. If he concludes that upon the evidence there must be such a doubt in a reasonable mind, he must grant the motion; or, to state it another way, if there is no evidence upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt, the motion must be granted. If he concludes that either of the two results, a reasonable doubt or no reasonable doubt, is fairly possible, he must let the jury decide the matter.

United States v. Taylor, 464 F.2d 240, 243 (2nd Cir. 1972), citing Curley v. United States, 160 F.2d 229 (U.S. App. D.C., 1947), cert. denied, 331 U.S. 837 (1947).

The Court in Taylor clearly focused on the fact-finding function of the jury:

> . . . But if a reasonable mind might fairly have a reasonable doubt or might fairly not have one, the case is for the jury, and the decision is for the jurors to make.

Taylor at 243, citing Curley at 932.

In performing its duty the Court may not make judgments about the credibility of witnesses. United States v. Yeoman-Henderson, 193 F.2d 867 (7th Cir. 1954). The Court should accept the truth of the Government's evidence and give the Government the benefit of all reasonable inferences therefrom. United States v. McCall, 460 F.2d 952 (U.S. App. D.C. 1972). In fact, the evidence and testimony of the defendant may be ignored. United States v. Horton, 188 F.2d 427 (7th Cir. 1950). The Covernment submits that the evidence is clearly sufficient to sustain the verdict of the jury in this case.

Wayne Parker testified for the Government that the defendant who was riding in an automobile with New York license plates approached him in Brattleboro, Vermont,

and questioned him about the purchase of guns. Wayne Parker then contacted his brother Clarence Parker. The defendant agreed to pay the Parkers an amount of money if Clarence Parker assisted him in obtaining firearms.

Clarence Parker testified for the Government that the defendant entered Clapp's Sporting Goods Store and inspected some handguns. The defendant saw a .22 derringer and recommended its purchase to his companion, George Soriente. The defendant then looked at a .38 special Colt revolver. The defendant fitted the gun into his waist and carefully inspected the gun. The defendant paid part of the purchase price for the .38 special while Clarence Parker completed the necessary firearms records. The defendant left the store in possession of the two guns. Clarence Parker also testified that the defendant went to Galanes' Store and purchased a .38 Iver Johnson revolver. The defendant then returned to the car and told Clarence Parker to put all three guns in the trunk. After paying Parker the defendant admitted telling him that he (the defendant) could be reached at a telephone number in Queens, New York. The defendant then left.

Steven Durborow also testified for the Government. He stated that he was a clerk at Clapp's Sporting Goods Store when the defendant entered. He specifically told the defendant that guns could be sold only to residents. He testified that the defendant tried out the .38 special and paid part of the purchase price.

Agent William Reilly testified that the .22 derringer was received from George Soriente in Queens, New York, but the two .38's were not found.

Upon motion of the defendant, the Court properly consolidated counts 1-3 of the indictment into a single count charging transportation of the weapons by the defendant. See United States v. Calhoun, 518 F.2d 861 (7th Cir. 1975). The Court so instructed the jury that the Government need prove that only one of the guns was transported to satisfy its burden of proof on this element. Defendant was also charged with aiding and abetting such transportation.

As the Court instructed the jury, the elements of a violation of 18 U.S.C. §922(a)(3) are:

1. Transportation of firearms from Vermont to New York.
2. Residence of defendant on September 20, 1975 in New York.
3. Firearms purchased or otherwise obtained by defendant in Vermont.
4. Acting willfully and knowingly

The second element, residency, is not at issue since defendant admitted at trial that he was a resident of New York on September 20, 1975.

Evidence of the third element was introduced by the testimony of Clarence Parker and Steven Durborow clearly establishing that the defendant purchased the two .38's and counseled (aided and abetted) the purchase of the .22 derringer.

The jury could clearly find that defendant acted knowingly and willfully when he was told by Steven Durborow that he couldn't purchase or transport a gun but did it anyway, telling Clarence Parker to put the guns in the trunk of the car.

Finally, the jury could find from the evidence

that the defendant transported the guns from Vermont to New York. The jury could reasonably infer this from the evidence that the defendant ordered Clarence Parker to put the guns in the trunk of a New York car, told Parker that he lived in New York, testified that he left New York because he had a week off from work, testified that he traveled as far as North Conway, New Hampshire before turning around and was back in New York within a month at which time the .22 derringer was found.

Defendant erroneously contends that since the two .38 caliber guns were not recovered, defendant could only be found guilty of transporting the .22 derringer. However, as the Government has stated above, there was ample testimony, as well as circumstantial evidence, for the jury to draw the reasonable inference that the defendant transported the guns from Vermont to New York. Circumstantial evidence no less than direct evidence must be considered in the light most favorable to the Government. United States v. Bowles, 428 F.2d 592, 597 (2d Cir. 1970), cert. denied, 400 U.S. 928 (1970). If defendant's reasoning were followed, a defendant upon learning of a federal investigation could avoid prosecution by simply disposing of the weapons.

After speedily disposing of the issue of the two .38 guns, defendant argues that since he was acquitted of conspiracy, the jury could not have convicted him of aiding and abetting the transportation of the .22 derringer. Such a contention is without merit.

The act of conspiracy and aiding and abetting a substantive offense are separate and distinct crimes, Pereira v. United States, 347 U.S. 1 (1954), and acquittal of conspiracy to violate a statute does not require acquittal of aiding and abetting another to violate the same statute. Ottomano v. United States, 468 F.2d 269 (1st Cir. 1972), cert. denied, 409 U.S. 1128 (1973). In Ottomano the defendant was acquitted of conspiring to sell cocaine but was convicted of aiding and abetting another to sell the same cocaine. All the evidence concerned a single transaction. The Court, rejecting defendant's reliance on Sealfon v. United States, 332 U.S. 575 (1948) held that aiding and abetting and conspiracy involved two separate violations and acquittal on the conspiracy count did not preclude a conviction for aiding and abetting.

Defendant's reliance on United States v. Sall, 116 F.2d 745 (3rd Cir. 1940) is misplaced. The Court in Sall stated that each count of an indictment should be considered separately and viewed in light of the evidence introduced to prove that count. The Court did not say that a person acquitted of conspiracy cannot be an aider and abettor. The other cases cited by defendant involve persons convicted of aiding and abetting who had no knowledge that a substantive violation was involved. The Courts rightly held that mere knowledge was not enough. However, the testimony in the instant case goes far beyond mere knowledge. The defendant counseled his companion to buy a gun, bought two for himself and ordered Clarence Parker to put all three guns in the trunk of the car he had used. He paid Clarence

Parker money and then left in that same car. Clearly, such testimony indicates more than mere knowledge.

However, even if, arguendo, the verdict lacks consistency, that is not sufficient to acquit the defendant. Consistency in verdicts is not required. Hamling v. United States, 418 U.S. 87 (1974). The jury has the prerogative to return inconsistent verdicts as long as there is evidence to support the verdicts. United States v. Zane, 495 F.2d 683, (2nd Cir. 1974), cert. denied, 419 U.S. 895 (1974). In the instant case the Government submits that there was sufficient evidence to sustain the jury verdict.

Defendant also claims that he is entitled to a new trial because of remarks made in closing argument about defendant's residency in New York. As stated above, residency was an element of the offense charged. Transportation from Vermont to New York was also an element. Under the facts of the case the prosecution was certainly entitled to refer to defendant's being a "New Yorker" and traveling to Vermont to use "Vermonters" for his own purposes. Such argument was clearly addressed to the elements of proof and facts in evidence and constituted forceful advocacy. See United States v. Cook, 432 F.2d 1093 (7th Cir. 1970), cert. denied, 401 U.S. 996 (1970). In addition, defense counsel made no objection to the closing argument at that time. He should not be allowed to object now. See United States v. Briggs, 457 F.2d 908, 912 (2nd Cir. 1972).

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For the foregoing reasons, the UNITED STATES respectfully requests that defendant's motions be denied.

DATED at Rutland, in the District of Vermont, this 5th day of May, 1976.

UNITED STATES OF AMERICA

George W.F. Cook
United States Attorney

By: Jerome J. Niedermeier
Jerome J. Niedermeier
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have this 5th day of May, 1976 mailed a copy of the attached Response to Stephen G. Murphy, Esq. and James P. Carroll, Esq.

Jerome J. Niedermeier
Jerome J. Niedermeier
Assistant U.S. Attorney

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UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF VERMONT

| | |
|---|---|
| The United States of America | |
| vs | Criminal Action #75-86 |
| ROBERT P. GIALLANZO | |

Hearing before The Honorable JAMES S. HOLDEN, Chief, U.S. District Judge, at Brattleboro, Vermont, 4 June 1976, on Defendant's Motion for Judgment of Acquittal and a new trial; and if denied, for sentence.

Appearances:

The Hon. JEROME NEIDERMEIER
Assistant United States Attorney

STEPHEN MURPHY, Esquire,
Attorney for Defendant.

4:46 p.m.

THE COURT: You may call the case.

MR. TRUDELL: The next matter before the Court, Your Honor, is Criminal Number 75-86, The United States of America against ROBERT P. GIALLANZO. The defendant is present in court with his attorneys, JAMES P. CARROLL and STEPHEN G. MURPHY, Esquires. The matter is before the Court for hearing on Defendant's motion for Judgment of Acquittal and for a new trial and if so denied, for sentencing. The Government is present by JEROME NEIDERMEIER, Assistant United States Attorney, and PAUL PICHER, U.S. Probation Officer.

THE COURT: Mr. Murphy, you may address the Court.

MR. MURPHY: Yes, Your Honor. With the Court's permission, addressing myself to my Motion for Judgment of Acquittal. Your Honor, the defendant was convicted, as I am sure you are aware, on the first count of the indictment, of transporting weapons into New York from Vermont. Aiding and abetting in this transportation of these weapons or one weapon into the State of New York.

I submit to the Court, Your Honor, that there is absolutely no evidence, whatsoever, in which a reasonable verdict could be reached of guilt as far as that count of the indictment is concerned.

I think if Your Honor will permit me, that the acquittal on all of the other counts, although inconsistent verdicts are permitted in Federal Court, is so grossly irrational that it would require the Court in and of itself, to set the verdict aside.

If we go, Your Honor, just to the tenth count of the indictment, which is the conspiracy count. I realize there are numerous cases which indicate that you can be acquitted on a conspiracy and convicted of aiding and abetting. However, all of the cases in which the Government cites, and which I have seen, are so closely related in which the conspiracy and the aiding and abetting, happen at the same time and in the same type of crime.

In the situation that we have before this Court, we are only dealing with one count and that is the transportation of weapons into New York. As to the two weapons, they were never shown that they were ever transported into New York. There is absolutely not one iota of evidence.

The Government contends that circumstantial evidence would justify a conviction on that, if given the most favorable light from the Government's standpoint.

However, there is no evidence. There's not circumstantial evidence of transportation. There is absolutely no evidence of any transportation and no evidence that this defendant participated in it in any way in aiding and abetting, in any way. There was no evidence that he paid for the trip. There was no evidence that he was the operator of the car. There was no evidence that he directed that the car go back to New York or in any way, aided and abetted in those weapons being brought into New York.

The only evidence that comes before this Court and that Jury is from the defendant, himself, and that is that he went

to North Conway, New Hampshire. And there is no evidence to show that he ever returned from North Conway to New Hampshire. In fact, the truth of the matter is, Judge, he went to Boston and never came back with SORIENTI to New York at that time.

The Government offers as their conclusive evidence for proof beyond a reasonable doubt, that one month later this defendant was in New York. The gun is not found on him in New York. There is no evidence that he came back into New York in the car with the gun. So that what are we left with, Judge? We are left with incidents that happened in New Hampshire.

The Government contends that because he assisted or put the gun in the car, that is taking their testimony from the most favorable light, because there was so many conflicts in their testimony as to who put it in the car, who did what in Vermont, that at that point, they are saying that this is evidence of transportation.

Judge, that is no evidence of transportation and I believe that the Jury vindicated him of all counts having anything to do with Vermont. They said he is not guilty of these counts. They said he didn't do this in Vermont. They said he didn't do anything in Vermont.

So now, what are we left with? We are not left with one single thing that indicates he aided and abetted in bringing these guns back into New York.

I believe, Your Honor, I cited cases in my Memorandum that I submitted to the Court that would differentiate aiding

and abetting from conspiracy and that has to be a most, - much more close relationship to the crime and that the defendant has to affirmatively participate in it to much greater degree. I cannot see how this Jury, rationally, or the Court could let a verdict stand, where they acquit him of a conspiracy, when all of the acts happen in Vermont that relate to the conspiracy. Nothing whatsoever happens in New York. Nothing whatsoever happens after the fact that he leaves Vermont here. The only thing we have is that he goes to New Hampshire.

Was there any evidence, Judge, from any witness, that he aided and abetted in this transportation. That he brought the transportation about?

The only witnesses that were before the Court that could have clarified this was the Government's witness, SORIENTI, who they never called to the stand and who, through their own witnesses, indicated that he stated the Defendant was innocent of any wrong-doing.

The verdicts, Judge, when you look at 4, 5 and 6, on which he was acquitted and the elements of the sale of the gun, how did the Jury come in and acquit him on that?

There's only one thing, looking at it in the most favorable light, the Jury obviously didn't believe that the witnesses brought before the Court, thought that he was a resident of New York, because the other elements are contained in the first count of the indictment. So that, if you find that they say he is not guilty of this, you must find that the reason

they said it is that they didn't believe that either one of the two brothers, Clarence or the other one, believes that he was a resident of New York. That is the only logical conclusion that can be derived from that. We, when we look at the tenth count of the indictment, Your Honor, that means the conspiracy, If everything happened here and they acquit him of that, they say he did not conspire, what evidence was there that anything ever happened in New York? That he brought about the trip here, forgetting that, even though that's not the issue, but what evidence is there that he aided and abetted in the guns being brought back to New York, in the transportation, because that is the only thing that this Court can be concerned with at this time.

I submit, Judge, that there is no evidence whatsoever of that, that the Government left him in North Conway, never brought him back to New York, that they abandoned their pursuit of that, and therefore, abandoned any rational relation to a verdice of guilty to, on the issue of transportation into New York.

If he wasn't in New York, if he didn't come back into New York, with the gun at that time, can they now come before this Court and before a Jury and reasonably say to the Jury that you can infer from circumstantial evidence, all of the circumstances, circumstantial evidence relating to counts on which the defendant was acquitted by the Jury and now say, that you can infer from that beyond a reasonable doubt that this defendant is guilty?

Judge, I would just have to go back to the one issue and that being the charge that is given to the jury in relation to circumstantial evidence, that it must ex clude to a reasonable hypothesis, all evidence other than that of guilt.

Now, can we conclude, Judge, from the fact that he committed certain acts in Vermont, if we accept the Government's testimony in the most favorable light, that we are going to derive from that, everything else other than guilt that he bought the guns or that he brought the guns back into New York when there is not one iota of testimony from which we could come to that conclusion and all other reasonable hypothesis he has been acquitted of here in Vermont.

What the Government is doing in their argument, Judge, is going back to the issues that happened here in Vermont and -saying that we conclude from this beyond a reasonable doubt that he transported weapons into New York and he has been acquitted of all of the incidents that happened here in Vermont and nothing happened in New York.

I cannot see how a rational person could possibly come to that conclusion. The only thing that I can possibly believe is that the Jury was totally confused and felt although the Court charged them correctly, that his presence in the car, that somewhere along the line that they could justify something from that and did not understand that the car had to come back to New York and that he had to perform some affirmative acts in bringing it back into New York.

And in doing this, may I further argue to the Court,

Judge, that on the issue of prejudice, on summation of the United States Attorney, that he belabored the issue of the fact that the defendant was a New Yorker, the fact that the witnesses were uneducated Vermonters, that he came up here with one thing in mind and that was to take advantage of uneducated people from Vermont. Judge, I feel that is so inflammatory that, although he raises the issue that I did not object to it at that time, I feel that it is so grossly inflammatory that no objection was necessary, other than the initial part of my summation to the Jury in which I told hem I couldn't believe he said that. That I had never heard anything like this before in my life in a court of law, that somebody could appeal t. such basic instincts.

I feel that, Judge, that no matter how often I cited in my brief, myself, that residence is an element of the crime but Judge, it is not an element of the crime where you keep referring to people as "Vermonters," as "New Yorkers," and indicating that in some way the local boys from Vermont here are telling the truth and these New Yorkers are coming up here and taking advantage of them and that I was taking advantage of them and that this defendant took advantage of them.

Thank you, Your Honor.

THE COURT: Mr. Neidermeier, will you respond?

MR. NEIDERMEIER: Your Honor, the Government is well aware that the Court heard the evidence in this case and heard all of the testimony and knows the facts well.

The Government has responded to the Defendant's Memorandum

and has stated sufficient law to support the jury's verdict of guilty to count one of the indictment. Count one of the indictment of the, as the Court well knows, charges the transportation of the gun from Vermont to New York and charges the defendant as being an aider and abettor.

The Government would submit to the Court, as it has in its response, that the Jury had sufficient evidence to find the Defendant guilty of Count One of the indictment. That is, it had sufficient evidence that the fire arms, one or more of the fire arms, were transported from Vermont to New York, that on the date in question, the Defendant was a resident of the State of New York, that the fire arms were purchased, or otherwise obtained in Vermont and that the Defendant acted knowingly and wilfully as I have indicated in my response. And, as I have indicated in my response, the evidence showed that the Defendant left New York and went to Vermont, participated in the purchase of weapons in Vermont and was involved in the transportation of those weapons from Vermont back to New York, - where one of those weapons was recovered.

The Government would submit to the Court that the verdict of the Jury is sustained, if there is sufficient evidence for the Jury to find that the Defendant is guilty and the Government would submit to the Court that the evidence presented to the Jury was sufficient to find the defendant guilty of Count One of the indictment, as the Government has indicated.

It is not a prerequisite that the Defendant be convicted of all counts to be convicted of one. That inconsistent verdicts,

or verdicts which may be inconsistent, do not mean that the, there is insufficient evidence to sustain a guilty verdict of the Jury.

The Government would submit in this case that the Jury had sufficient evidence on count one of the indictment to find that the did in fact violate count one of the indictment, did in fact commit the crime of which he was found guilty.

MR. MURPHY: Your Honor, may I be heard?

THE COURT: Yes.

MR. MURPHY: The Government has come forth now and stated that there was sufficient evidence to justify this. May I just submit to the court, Judge, what is the evidence to justify the guilty verdict on transportation?

The Government has just gotten up and stated that he came from New York to Vermont and had purchased guns in Vermont and he was acquitted of doing that.

What evidence is there that he came back from Vermont, that he aided and abetted in the transportation? They keep avoiding the issue. They cited law?

Judge, they cited absolutely no law to justify their position. What they attempted to do, since they had no position that they could justify, as to talk about him coming from New York to Vermont and purchasing weapons. They never addressed themselves nor have they addressed themselves today, to the question of whether or not he transported those weapons from Vermont to New York.

Where is the evidence that he did that?

What evidence are they relying on?

They say "substantial evidence." I challenge them, Judge, before this Court, to show me any evidence. There is absolutely nothing, absolutely nothing in the record, or anywhere else, in their argument, in their brief, to justify a conviction on that count.

They have come before this Court, now they have addressed the Court. Judge, what did he say that indicated this defendant had anything to do with bringing those guns back to New York?

The gun is found in New York a month later on somebody else, who says this defendant had nothing to do with it. Is that evidence?

Is there any evidence that he came back into New York in the car with the gun? What evidence is there?

They say "substantial evidence," but they don't put forth any evidence. They don't stand up and tell this Court "here is the evidence, that shows that he is guilty of transportation."

They leave him in Vermont and they absolutely refuse to go any further because they can't go any further, because there is absolutely no evidence, Judge, and as far as I am concerned, Judge, I just feel it was an absolute miscarriage of justice and it would be a miscarriage of justice to let it go one step further.

There is no argument to justify their position. The cases they cite in no way justify their position. They are completely unrelated to the facts of this case and I would

ask the Court if you have any doubt as to the validity of what I am saying, to let the U.S. Attorney explain his position and to explain how those cases relate in any way, to the facts in this case and how in any way, he can justify that conviction, other than getting up and making general statements about who came to Vermont and who did what in Vermont and the fact that everyone is acquitted of anything that happened in Vermont and nobody ever brings the defendant back into New York and there is no evidence that he aided and abetted in any transportation into New York, nor is there any evidence that the guns ever came into New York, while he was in the car, and there is only evidence that one gun was in New York, is found a month later on somebody else who says that the defendant had nothing to do with it.

On the basis of that, the U.S. Attorney stands in front of the Court and says, there is substantial evidence to justify this conviction, but no way tells us what this substantial evidence is.

He says, "there is circumstantial evidence?" There is no evidence. There is no evidence. It is not circumstantial, Judge, they have to give us a foundation from which these facts can be derived. There is absolutely no foundation everything happened in Vermont and the defendant is acquitted of anything that happened in Vermont.

How he can now jump from over here, fifty miles over here, is absoultely beyond me and I don't think without any disparagement to the United States Attorney, that he has any evidence, nor has he any argument, and that is why he is

not making any argument. Thank you, Your Honor.

THE COURT: The Court will take the arguments of counsel under consideration and I will take a brief recess.

(RECESSED FROM 3:10 P.M. UNTIL 3:32 P.M.)

THE COURT: The Court has taken time to reflect on the arguments of counsel, oral arguments of the counsel and I also had in mind the written Memoranda that were submitted prior to the hearing and I also took the occasion to refer again to the rather extensive trial notes that I took during the trial.

While I realize it is not necessary to reconcile the counts of acquittal with those of conviction, it appears to the Court that since the witness, CLARENCE PARKER was the purchaser on the official transactions, as prescribed by the secretary regarding the purchase of these weapons, I believe the Jury regarded him as the purchaser. However, there is substantial evidence in the case that the Defendant paid for the guns and there is evidence that the guns were carried by PARKER to the car and was directed by the Defendant to put the "cars" in the trunk. In fact, the evidence is, that the defendant directed him to place the weapons in the trunk of the SORIENTI vehicle and that was followed by instructions at the defendant's request, as to how to get, to get to Interstate 91 and one of the PARKER brothers directed the defendant and SORIENTI as to how they could get from the Brattleboro Interstate 91,

There was evidence that the Defendant paid $20.00 to the PARKER brothers for their participation in the transaction

and all of the other matters considered, including the testimony of the Clerk at Clapp's Sporting Goods Store, the witness DURBOROW, satisfied the Court that the evidence of conviction on the count of which the defendant was convicted, is supported by substantial evidence.

Concerning the reference to the different, - to Vermonters and New Yorkers, the Court felt that at the time the argument was made, in the absence of any objection from the defendant, I felt it cut against the Government, perhaps, as much, as much as, if not more so, than it did against the defendant and it appeared that perhaps the defendant, in view of the extensive voir dire conducted when the jury was empaneled, that he might wish to take advantage of the remarks of the Assistant United States Attorney in summation, in his summation, and as I recollect it, although I haven't referred to the record in this respect, it is my recollection that the opening remarks by counsel for the defendant, in his final summation, was direct to that point. And, I feel that he got all the mileage out of the ill-chosen language of the Government and used it to good advantage and it may be that that had some bearing on the acquittal of the plaintiff on the other counts where he, the defendant, was charged with aiding and abetting the, CLARENCE PARKER.

The Motion for Judgment of Acquittal is denied, and, the Motion for a New Trial, is denied.

MR. MURPHY: I realize Your Honor has made the ruling and in this matter. But could I please be heard, because I

just feel that the point has been completely missed in the sense that Your Honor has just stated that there is evidence that the guns were placed in the car. Fine.

Your Honor has stated there is evidence that directions were asked for to Interstate 91.

THE COURT: Yes, and there is evidence -

MR. MURPHY: What evidence is there that -

THE COURT: Just a minute, Mr. MURPHY, there is also evidence that a .22 Magnum arrived in New York and was found in New York.

MR. MURPHY: One month later. (SIMULTANEOUS VOICES)

THE COURT: The Court,- (SIMULTANEOUS VOICES)

MR. MURPHY: On the co-defendant. (SIMULTANEOUS VOICES)

THE COURT: The Court has made its ruling and you may have - we'll note your objections.

MR. MURPHY: For the record, Judge, I do.

THE COURT: The Court will proceed to disposition of the case and I will inquire at this time of Mr. Murphy. Have you had an opportunity to review the pre-sentence -

MR. MURPHY: Yes, Your Honor.

THE COURT: - report?

MR. MURPHY: Yes, Your Honor.

THE COURT: And Mr. GIALLANZO, have you had a chance to go over the pre-sentence report?

MR. GIALLANZO: Yes.

THE COURT: With your attorney?

MR. GIALLANZO: Yes, Your Honor.

THE COURT: Are there any corrections or changes that should be made?

MR. MURPHY: Your Honor, as far as from the standpoint as to whether or not the defendant is employed, the defendant has been sporadically employed. The defendant has tried to obtain employment. I don't know whether Your Honor is familiar with the situation that exists in New York as far as employment is concerned, but with his background and his education, he getting a, obtaining a job, is rather difficult, especially when approximately 15% of the people who are much better educated than him, are unemployed at this time in New York. He has worked sporadically for his father and for two other companies and has submitted notes to the probation officer to that effect. As far as the portion concerning his father not going down to see the probation officer, his father, Mr. Richard GIALLANZO is present in Court and has been present in Court on every occasion.

THE COURT: The Court is mindful of that.

MR. MURPHY: He would have gone down but he was never notified to go down. He knew nothing about any desire on behalf of the probation officer to want to discuss anything with him in any respect to this matter.

I would bring to the Court's attention, Judge, and I think you should take notice of it, that he has shown an interest, and the family has taken an interest in their child and naturally, under the circumstances, I am sure that if he was notified in any way to appear down there, that he would

have appeared down there in an attempt to help his son in any fashion that he could.

As far as that aspect of the report is concerned, I would definitely take exception to that portion.

THE COURT: The Court has noted the presence of the defendant's father and mother during the course of the trial and I believe at other times as well as his presence today.

MR. MURPHY: As far as the matter that is mentioned about a prior arrest, that was what I guess you could classify a ballroom brawl which involved a number of people in which arrests were made and in which nobody ever was prosecuted anyone, it was just a fight amongst a bunch of boys. That is his only involvement with the law, Judge. Other than that he is absolutely clear.

THE COURT: Other than that are there any other changes or any questions or changes which you wish to offer, Mr. GIALLANZO?

MR. GIALLANZO: No, Your Honor.

THE COURT: Do you know of any reason why the Court should not make disposition of your case at this time, Mr. GIALLANZO?

MR. GIALLANZO: No, Your Honor.

THE COURT: Mr. MURPHY, do you?

MR. MURPHY: No, Your Honor.

THE COURT: Is there anything that you wish to say in your client's behalf or any information you wish to present beyond that which is contained in the--

MR. MURPHY: Well, Judge, all I can give you is my personal impression of the young man and although it holds no weight at this point, I tell you that he has maintained his innocence throughout and that the co-defendant has maintained this defendant's innocence throughout this entire matter and subsequent to it, has maintained his innocence and so has this defendant.

I can inform the Court at this point that I definitely intend on appealing the matter. However, as for as the defendant's character is concerned, Judge, he is not a very well educated young man. He has tried to make whatever attempts are available tohim in the very tight job market to secure employment. He works part-time for his father and at the present time he is attempting to open a bar-type discotec in the City of New York in which his interests lie. He would receive a certain interest in it as a manager of the premises in return for repair work that he will do on the premises. Although, he is not licensed as a carpenter, he is doing this type of work on the premises and another young man is helping him with electrical work in putting this premises in order. I believe that is indicative of the fact that he is doing whatever is available to him to better himself, but the report indicates that he has no ambition and direction, I believe it indicates something of that nature.

I would just like to bring to the Court's attention the young man's age, what opportunities are available to him and what the probation officer means by, "has no career

aspirations" or whatever, the exact verbages he uses in that, I do not know, because as far as I can see, in the current job market, there is only one thing that is available to him in New York and that is to work with his father and eventually hopefully take over the business when he reaches a suitable age in which he can conduct the business. He is availing himself of whatever opportunities are available to him in those lines.

Judge, I would strongly request that the Court sentence him under the Youth Corrections Act so that this blur can be eradicated from his record, although I firmly believe that it will be on appeal that in the instance that that does not occur, that Your Honor would sentence him under the Youth Corrections Act. I do not believe that [redacted] is a bad boy and I do not believe he has done anything wrong and I believe that all of the testimony that came before This Court would indicate that he was not a strong participant, nor did he do anything wrong and I believe there is a lot of testimony in this Court which would just indicate that this was nothing more than a lark.

Assuming you believe everything else, assuming that you believe all of the testimony as to everyone else, there was a one-shot affair, something that happened, that when requested as to whether or not they would like to do it again, a wrong phone number was produced at that time for the people, so that under the circumstances, Judge, I am sure that you will never see this young man before this Court, or any other

Court in the near future.

I believe the ordeal of traveling up here and going through this trial over a rather lengthy period of time has taught him a lesson that he will never forget and I am sure if Your Honor gives him the conditional discharge, or probation, you will never see him again. Thank you.

THE COURT: Mr. GIALLANZO, is there anything that you wish to say to the Court?

MR. GIALLANZO: No, Your Honor.

THE COURT: You have no comment or, I take it you go along with your attorneys suggestion -

MR. GIALLANZO: Yes, Your Honor.

THE COURT: -- that you be considered for treatment under the Youth Correction that the, the provisions of the Youth Corrections Act?

MR. GIALLANZO: Yes, Your Honor.

THE COURT: In this case disposition is made under the provisions of the Youth Corrections Act. The Court finds tha ROBERT GIALLANZO, at the age of twenty, comes within the definition of a Youth Offender, as provided in Section 5006, Title 18.

The Court finds that in lieu of any penalty or imprisonment otherwise provided by law, I will sentence the defendant to the custody of the Attorney General for treatment and supervision under the, pursuant to the Chapter that relates to disposition under the Youth Corrections Act, until discharged by the Division.

The Court, - your attorney has indicated, Mr. GIALLANZO that you will wish to appeal, that in all probability you will appeal the case, but I want to fully inform you that you do have a right to appeal and you also have the right to apply for right to appeal, informa pauperis if you are unable to pay the costs of an appeal and if you are unable to pay the costs, the Government, of course, will, upon proper showing, the Court will direct that your appeal be informa pauperis.

I take it that you have been fully advised of your right to appeal in these matters but I want to make it abundantly clear on the record.

MR. GIALLANZO: Thank you, Your Honor.

THE COURT: Yes.

MR. MURPHY: Your Honor, would you stay execution of the sentence until the appeal is perfected?

THE COURT: Yes, I take it you are making a formal motion for stay of execution?

MR. MURPHY: Yes, Your Honor.

THE COURT: Execution of the - the motion will be granted and the bail that was provided in the case will be continued.

MR. MURPHY: Thank you, Your Honor.

(THIS HEARING ENDED AT 3:48 P.M.)

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Certified to be a true and complete transcript of the proceedings as captioned on page 1, hereof.

HERMAN J. VESPER
OFFICIAL FEDERAL REPORTER
P. O. Box 143
RUTLAND, VERMONT 05701

AFFIDAVIT OF SERVICE BY MAIL

Re: U.S. v. ROBERT P. GIALLANZO
Docket No. 76-1272

STATE OF NEW YORK )
COUNTY OF QUEENS )SS:

MARILYN OFFEN being duly sworn, deposes and says:

deponent is not a party to the action, is over 18 years of age and resides in Queens County.

On August 17, 1976 deponent served the within 3 copies of Appellant's Appendix and 3 copies of Appellant's Brief upon GEORGE W.F. COOK U.S. ATTORNEY (Attention Jerome Neidermeier, AUSA), U.S. Attorney for the District of Vermont in this action at Federal Building, Rutland, Vermont, the address designated for that purpose by depositing a true copy of same enclosed in a post paid properly addressed wrapper in a post office official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Marilyn Offen
MARILYN OFFEN

Sworn to before me this
17th day of August, 1976.

Robert Sadowski
ROBERT A. SADOWSKI
NOTARY PUBLIC, State of New York
No. 41-3424975
Qualified in Queens County
Term Expires March 30, 1977

BEST COPY AVAILABLE